United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

75-5011

United States Court of Appeals

For the Second Circuit.

B

P/S

In the Matter of NAT FAYE

KENNETH ZITTER, Trustee,

Plaintiff-Appellee,

-against-

NAT FAYE,

Defendant-Appellant.

Joint Appendix

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UNITED STATES COURT OF APPEALS
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. 75-5011

In the matter of Nat Faye

vs

Nat Faye

CASE NO. 71-b-903

JUDGE DBB

EXTRACT OF DOCKET ENTRIES

DATE	PROCEEDINGS
7-24-1975	Filed transcript ;of proceedings dated 4-16-1975

RAYMOND F. BURGHARDT, Clerk

By _____ Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

In the Matter

of

NAT FAYE,

Bankrupt.

In Bankruptcy

No. 71 B 903

- x

SPECIFICATIONS OF OBJECTIONS
TO DISCHARGE

TO THE HONORABLE EDWARD J. RYAN, REFEREE IN BANKRUPTCY:

KENNETH A. ZITTER, of One Battery Park Plaza, New York, New York 10004, as Trustee of the Estate of Nat Faye, the above-named bankrupt, having examined into the acts and conduct of Nat Faye, bankrupt, and being satisfied that probable grounds exist for the denial of the discharge of said bankrupt, does hereby oppose the granting to said bankrupt of a discharge of his debts, and specifies the following as grounds of objection:

1) The bankrupt has committed an offense punishable by imprisonment as provided under 18 U.S.C. §152, in that the bankrupt knowingly and fraudulently made a false oath in relation to this bankruptcy proceeding in that the verified schedules filed by him herein, failed to list several items of jewelry, including, but not limited to, a 10 karat diamond ring;

2) The bankrupt has failed to keep and/or preserve books of account or records from which his financial condition and business transactions might be ascertained; and

3) The bankrupt has committed an offense punishable by imprisonment as provided under 18 U.S.C. §152 in that the bankrupt knowingly and fraudulently made a false oath in relation to this bankruptcy proceeding by testifying, under oath, to the effect that his wife had purchased a certain 10 karat diamond ring with her own funds approximately six months prior to the time the ring was pledged to the Provident Loan Society on June 22, 1972; that the ring was not purchased with the intention of pledging it to obtain funds for the bankrupt and that the bankrupt had no knowledge of the purchase of the ring until some extended period thereafter. That the bankrupt so testified is evidenced by the excerpts from the transcript of the adjourned first meeting of creditors held on September 19, 1972, which are annexed hereto and made a part hereof as Exhibit "A." In fact, the diamond ring in question was not purchased with his wife's funds, but was purchased on credit from Gimbel's on June 21, 1971, one day before it was pledged to the Provident Loan Society. Moreover, the bankrupt admittedly requested his wife to pledge the ring on June 22, 1971, and admittedly received the proceeds of the loan, all of which evidences both the bankrupt's knowledge of the purchase of the ring and the fact that the ring was purchased with the intention of pledging it immediately to obtain funds for the bankrupt. As to the bankrupt's admission that he requested his wife to pledge the ring on June 22, 1971, and that he received the proceeds of the loan, annexed hereto and made a part hereof as Exhibit "B" is an excerpt from the transcript of the bankrupt's testimony at the adjourned first meeting of creditors held on September 19, 1972.

Dated: New York, New York
October 5, 1972

Kenneth Zitter
KENNETH A. ZITTER, as Trustee

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, KENNETH A. ZITTER, the Trustee of the estate of Nat Faye, bankrupt, named in the foregoing specifications, do hereby make solemn oath that the statements made herein are true according to the best of my knowledge, information and belief.

Kenneth Zitter
KENNETH A. ZITTER

Subscribed and Sworn to
before me this 5th day
of October, 1972

Patricia Green
NOTARY PUBLIC

PATRICIA GREEN
Notary Public, State of New York
No. 24-6641753
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1974

Q Where did she have the funds to purchase the ring?

A Well, she's always had some of her own money. She's always saved some of her own money. She's had her own account and she's saved some of her own money

(A.F.M. 9/19/72, at 6)

Q Can you just try to concentrate, pin it down as to when you recall when she purchased that ring? I believe that the ring was originally pledged on June 22, 1971 to the Provident Loan Society. Do you recall how long Mrs. Faye had the ring before it was pledged?

A Well, she must have bought it within the period of '71.

Q In the period of 1971?

A That's when she must have bought it. You see, Mrs. Faye would buy things and she wouldn't tell me right away when she had bought it. She'd buy a number of things and she did a lot of shopping I didn't know about. She'd do a lot of shopping on her own.

Q She'd keep a ten carat diamond ring secretly?

A Well, it's possible she would keep a ring. She once bought a bigger item than that and didn't tell me for quite a long time.

Q To your knowledge, did Mrs. Faye purchase the ring with the intention of pledging it subsequently to obtain funds to --

MR. LEINWAND: I object to that, your Honor.

THE REFEREE: Overruled.

A No.

Q No, she --

A She did not.

Q But you still can't recall when exactly she might have purchased it?

A As I told you, they wouldn't tell me. She would buy things that she wouldn't tell me when she bought it. She would tell me six months later, she would tell me.

Q Well, is it your recollection that this time she purchased it perhaps six months before June 22, 1971?

A It's in that period.

Q It's within six months of that period?

A Yes, must be within that period. I don't exactly recall when.

Q Were these times of financial difficulties for you, the six month period before June 22, 1971?

A They were financially difficult for me.

(A.F.M. 9/19/72 at 7-9)

Q Mr. Faye, did you request your wife to pledge the ten carat diamond ring on June 22, 1971?

A Yes, I asked her to.

Q She pledged the ring and turned the proceeds of the loan over to you for your use; is that correct?

A That's correct.

(A.F.M. 9/19/72, at 12)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

(In Bankruptcy)

----------x

In the Matter of :

NAT FAYE, individually, and doing business as EMENESS TRADING, : 71 B 903

:

Bankrupt.

----------x

United States Court House
Foley Square
New York, New York

December 18, 1972
2:15 o'clock P.M.

B E F O R E :

HONORABLE EDWARD J. RYAN,

Referee.

ADLER REPORTING SERVICE
STENOTYPE REPORTERS
15 PARK ROW
NEW YORK, N.Y. 10038
CORTLANDT 7-3343
CORTLANDT 7-3339
NIGHT PHONE 233-3151

Appearances:

KENNETH ZITTER, ESQ.,
Trustee,
1 Battery Park Plaza,
New York, New York

MESSRS. LEINWAND, MARON, HENDLER & KRAUSE,
Attorneys for Debtor,
10 East 40th Street,
New York, New York

BY: ISIDOR E. LEINWAND, ESQ., of Counsel.

- - -

THE REFEREE: Are you ready for the objecting creditors, Mr. Zitter?

MR. ZITTER: Yes, sir.

I would like to call Mr. Bernard Choiley.

BERNARD CHOILEY, having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: Give the reporter your full name and your address, please.

THE WITNESS: Bernard Choiley, 150 Bennett Avenue, New York City.

DIRECT EXAMINATION

BY MR. ZITTER:

Q Mr. Choiley, where are you employed?

A At Gimbels, 33rd Street and Broadway, for Marcus Jewelry Gallery, a leased department.

Q In what capacity are you employed?

A Diamond salesman.

Q How long have you been employed by Marcus Jewelers?

A Fifteen years.

Q Have you ever met Mr. Nat Faye?

A Yes, with Mrs. Faye.

Q In what capacity did you meet them?

A As customers.

Q Do you recall Mr. and Mrs. Faye coming to Marcus Jewelers in June of 1971?

A Yes, I do.

Q What did they come in for?

A To purchase jewelry.

Q What type of jewelry in particular; if you recall?

A There wasn't anything in particular. They were looking for several pieces and they selected several pieces on a given day.

Q Do you recall what several pieces they selected?

A Well, one of them was a fancy piece, and the other piece was selected on the second trip.

MR. LEINWAND: I would object to that. If we are talking about one occasion, I would like it to be confined to that occasion and --

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Mr. Zitter, if you can, you will fix the time and place of each of the visits to this gentleman's establishment.

BY MR. ZITTER:

Q How many times did Mr. and Mrs. Faye, or Mr. Faye or Mrs. Faye --

A As far as I can recall, there were two trips.

Q During the month of June 1971?

A Yes, June.

Q Were both Mr. and Mrs. Faye present on both of those occasions?

A Yes.

Q Do you recall what particular items of jewelry they purchased?

A One was a lapis lazuli piece, if I recall, an inexpensive piece, possibly a thousand dollars or so,

and the second piece was that large stone, the pear shaped diamond ring for $15,900.

MR. LEINWAND: I would like to know whether those were both purchased at the same time.

THE WITNESS: No, they were not.

Q During the course of your discussions with Mr. and Mrs. Faye regarding the purchase of this 10 carat diamond ring, was there any discussion about state taxes?

A Yes, there was. The $15,900 ring had a tax at that time -- possibly a six per cent tax.

And they said that they were going to Florida, so I said, "I can save you the tax if I can mail the ring to Florida, and not pay the tax."

And they said no, it was all right, they didn't mind that at all. They wanted it, they were going to Florida; they didn't want to save the tax.

And I thought it quite odd that they didn't want --

MR. LEINWAND: Objection.

THE REFEREE: Sustained.

A (Continuing) Nevertheless, I charged them that price, plus the tax, and they took the ring.

Now, I kept it on a memo. That was not charged

out until the following month, July. July 7th, to be specific, is when I charged it out, after I spoke to Mr. Faye on the phone.

Mr. Faye said to me, "Can you do any better than that?" -- meaning, the price.

And I said to him, "That's the price. It's a brokerage piece that was left here for sale."

He said, "All right, go ahead and put it through."

And I put the sale through on July 7th.

Q At the time you put the sale through, Mr. Choiley, do you recall whether Mr. Faye or Mrs. Faye already had possession of the 10 carat diamond ring?

A They had it since June. In other words, I waited from the latter part of June until July 7th for their okay.

MR. ZITTER: Will you please mark these cards for identification as Trustee's Exhibits 1 and 2.

(Two cards respectively marked Trustee's Exhibits 1 and 2 for Identification, as of this date.)

Q Mr. Choiley, I show you Trustee's Exhibits 1 and 2 for Identification. Are these records which

are maintained by Marcus Jewelers in the ordinary course of business?

A These are my copies.

MR. ZITTER: I offer Trustee's Exhibits 1 and 2 for Identification, in evidence.

MR. LEINWAND: I would like to see them.

(Documents handed to Mr. Leinwand.)

THE REFEREE: Will you state what they are, for the record, Mr. Zitter.

MR. ZITTER: They are copies, I believe, of the sales slips.

THE REFEREE: You believe it, or do you know it?

MR. ZITTER: They are --

THE REFEREE: Any objection?

MR. LEINWAND: No objection, Your Honor.

THE REFEREE: All right, they are received.

MR. LEINWAND: That one (handing to witness) has nothing to do with this situation; has it?

THE WITNESS: That's the initial purchase of the lapis lazuli 18 carat ring. That was

charged out on 6/29. That's from the first trip.

MR. LEINWAND: I object to that as not within the scope of the specifications. This involves nothing within the specifications.

THE REFEREE: Overruled.

Are these IBM cards that were prepared in the usual course --

THE WITNESS: No; this was my copy. It comes through on a carbon. It's just an IBM card to make the copies with. There are copies of this in Gimbels.

THE REFEREE: With respect to Trustee's Exhibit 2, it appears that the name, Mrs. Nat Faye, and the address were impressed thereon, with some kind of plate.

Will you describe that plate?

THE WITNESS: That is a charge plate that is used by people who shop in the store. That is a Gimbels' charge plate.

THE REFEREE: The first one seems to be printed by hand. Could you explain that?

THE WITNESS: That's the second one; yes.

In lieu of -- when I spoke to Mr. Faye on the phone, he said, "Proceed to put the sale through" after it was all consummated. I didn't have the charge plate, so I had to fill it in by hand.

MR. LEINWAND: That was the 472 --

THE WITNESS: No, that's the big one, the $15,000 sale.

THE REFEREE: All right.

(Trustee's Exhibits 1 and 2 for Identification received and respectively marked Trustee's Exhibits 1 and 2 in Evidence, as of this date.)

MR. ~~ZITTER:~~ That will be all.

CROSS-EXAMINATION

BY MR. LEINWAND:

Q Mr. Choiley, you said you have been employed by Gimbels for about fifteen years?

A By Marcus.

Q Have you known Mrs. Faye for that length of time?

A No.

Q Do you know whether she has had a charge account at Gimbels for at least that length of time?

A I have no idea.

Q You knew you were coming here to be a witness?

A Yes.

Q Did you take the file pertaining to Mrs. Faye with you?

A These two cards.

Q Did you look and see what she had purchased during the past twenty years?

A No.

Q Were you interested in finding out what sort of customer she was?

A No.

Q Do you know that she has been a charge account customer for twenty years?

THE REFEREE: What are you getting at, Mr. Leinwand?

MR. LEINWAND: I want to show a course of conduct.

THE REFEREE: Let's suppose she bought an expensive diamond every day in the week for the last fifteen years.

What does that have to do with the specifications of the objection to discharge?

MR. LEINWAND: That is exactly my defense to the specifications, Your Honor.

THE REFEREE: Namely?

MR. LEINWAND: That she has nothing to do with the bankruptcy of Nat Faye, and the question of whether or not he did anything wrong in this connection.

They are alleging that this ring belonged to him, when it was on her charge account, purchased by her, which we will bring out. It never belonged to him and was never bought by him.

BY MR. LEINWAND:

Q The account is in the name of Mrs. Nat Faye; is it not?

A Yes.

Q And to your knowledge, has it always been so?

A As far as I know, there were two transactions which read that way.

Q In connection with the first transaction, Mr. and Mrs. Faye came in?

A Right.

Q And selected some inexpensive jewelry?

A Right.

Q Do you know that most of those pieces were returned?

A Definitely; they were never purchased.

Q They were returned?

A Yes.

Q You then referred to another time when, you said, they both came in?

A Yes.

Q Are you sure Mr. Faye was there the second time?

A Yes.

Q What makes you so sure?

A On the 29th of June, the jade piece was selected, and they mentioned the fact that they didn't want a lot of little pieces which didn't mean anything, but they wanted one important piece.

Q Did you show them an important piece at that time?

A I showed them a pear-shaped diamond ring.

Q And they came back in July?

A No, I didn't see them in July. I spoke to Mr. Faye on the phone on July 7th.

You see, when they selected the ring, I had to get

a release upstairs, because it was a charge customer. Anything sold on a charge has to be called upstairs and a release has to be given by the credit office.

That was given to me, so I had given them the ring. They signed the sales slip, and I kept it until they came back from Florida, at which time they were to decide whether they were going to keep the ring or not.

And I held it until July 7th, at which time I called them and spoke to Mr. Faye. He said, "Can't you do any better on the price?"

And I said, "No, it's a brokerage piece, and we sell it for a small markup."

Q What did you hold? You said you held --

A I held the sales slip out.

Q But they had the ring already?

A They had the ring.

Q You say that on July 7th he called you?

A I called Mr. Faye.

Q You called --

A They had been away; they were in Florida. I called on July 7th.

And when he said, "All right, if that's what it is, that's the way it will be," that's the day I rang the

sale through the register.

That's why there is a discrepancy between June 29th and July 7th.

Q Is it not a fact that Mrs. Faye signed for the diamond?

A I don't know whose signature that is.

Q I show you Trustee's Exhibit 1 and ask you whose signature that is.

A I wouldn't know.

Q What does it say?

A It says, "N. Faye."

Q It says, "Mrs. N. Faye"?

A I can't make it out.

Q Yes, you can.

THE REFEREE: Mr. Leinwand, this is not a hostile witness. He is simply a business-man who came here to testify to facts.

There is no question that this was put on the credit card of Mrs. Nat Faye; I get that point.

MR. LEINWAND: I also want to point out --

Q This says, "Mrs. Nat Faye," on the larger one?

A I don't know.

MR. LEINWAND: Would Your Honor please look at that?

THE REFEREE: I looked at them and I noticed that, Mr. Leinwand, but keep in mind what the substance of the objection to discharge is, and that this man has nothing to do with respect to the subtleties of how this transaction was accomplished.

MR. LEINWAND: That is all, Your Honor.

THE REFEREE: Any redirect?

MR. ZITTER: None.

THE REFEREE: Thank you.

(Witness excused.)

MR. ZITTER: I call Mrs. Ruth Goodman, please.

R U T H G O O D M A N , having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: Give the reporter your full name and your address, please.

THE WITNESS: My name is Ruth Goodman; I live in Hazlet, New Jersey.

DIRECT EXAMINATION

BY MR. ZITTER:

Q Mrs. Goodman, where are you employed?

A Gimbels credit office.

Q In what capacity?

A I am the manager of the credit authorizations department.

Q How long have you been employed there?

A About fifteen and a half years.

MR. ZITTER: I would like to have this card marked Trustee's Exhibit 3 for Identification.

(Card marked Trustee's Exhibit 3 for Identification, as of this date.)

Q Mrs. Goodman, I show you this document marked Trustee's Exhibit 3 for Identification and ask you what that is.

A This is an application used in our department. We have the history of the customer on here.

Q Is that a record which is kept in the ordinary course of business by Gimbels?

A Yes.

Q Would you please read for the record the --

MR. LEINWAND: Objection.

THE REFEREE: Sustained.

Do you offer --

MR. ZITTER: I offer it in evidence.

MR. LEINWAND: I would like to see it.

(Document handed to Mr. Leinwand.)

MR. LEINWAND: I would like to question her on the voir dire on this, Your Honor. My understanding was that she had credit for twenty years before this. I want to know why this took place.

I would like to question her on that before it is brought into evidence, Your Honor.

THE REFEREE: Go ahead.

PRELIMINARY EXAMINATION

BY MR. LEINWAND:

Q Mrs. Goodman, is it not a fact that your records show that Mrs. Faye was a customer for some twenty years?

A I don't know how far back it goes; I don't have any dates. This is an updated application.

When we want to have additional information, we will ask for this, and that's the way -- it's for updated information.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Let the record show that the bankrupt concedes that Trustee's Exhibit 3 purports to be authentic on its face.

MR. LEINWAND: It is an application for credit.

THE REFEREE: All right, received.

(Trustee's Exhibit 3 for Identification received and marked Trustee's Exhibit 3 in Evidence, as of this date.)

DIRECT EXAMINATION (Continuing)

BY MR. ZITTER:

Q Mrs. Goodman, I show you Trustee's Exhibit 3 and ask you to read for the record the handwritten notation which appears in the middle of the card on the right-hand side.

A That was June 21st, I believe. "$15,515; jewelry." That's my signature. I authorized the release for that amount.

MR. ZITTER: Thank you.

I have no further questions.

MR. LEINWAND: No further questions.

THE REFEREE: May I ask this question: Does that mean that based upon your knowledge of Mrs. Faye's business standing or her

financial standing, you felt that Gimbels would give her credit for that sum of money?

THE WITNESS: Yes, sir, right.

THE REFEREE: Thank you very much.

(Witness excused.)

MR. ZITTER: I call Mr. Otto Katz.

O T T O K A T Z , having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: Give the reporter your full name and your address, please.

THE WITNESS: Otto Katz, Empire State Building -- 8 Ronald Drive, Monsey, New York.

MR. ZITTER: Before I begin the examination of Mr. Katz, I would like to state that Mr. Leinwand and I have stipulated that the 10.5 carat diamond ring which was purchased at Gimbels is the same ring which was pledged at Provident Loan Society of New York on June 22, 1971.

MR. LEINWAND: That is correct, except that I want to make it clear that it was purchased by Mrs. Faye.

MR. ZITTER: I am not stipulating to that.

And upon that date, a loan in the amount of $3500 was made by Provident.

THE REFEREE: Let me ask you this question:

When did Mr. Choiley say that the matter was made firm, on what date?

MR. ZITTER: July 7th, Your Honor.

The pledge, which took place on June 22, 1971, was redeemed on July 20, 1971.

MR. LEINWAND: Not redeemed --

MR. ZITTER: It was redeemed and repledged on the same date.

MR. LEINWAND: That is not the way -- they paid the interest for another year and continued to pledge --

MR. ZITTER: And that transaction took place in the --

THE REFEREE: In other words, while Mrs. Faye had the stone on memo, before she took title, before she got credit, she pledged it with Provident Loan?

MR. ZITTER: Yes, and that was done on June 22nd.

THE REFEREE: All right.

DIRECT EXAMINATION

BY MR. ZITTER:

Q Mr. Katz, what is your occupation?

A Jeweler.

Q How long have you been in the jewelry business?

A Fifty years.

Q Have you, as a regular matter in the course of business, done appraisals of jewelry?

A That is right.

Q Did you go to the offices of Provident Loan Society --

A Yes, this morning.

Q Did you view the 10.5 carat diamond --

A Yes.

Q In your opinion, what is the value of that ring?

A About $15,000; maybe more.

MR. ZITTER: I have no further questions.

MR. LEINWAND: I have no questions. I do not see the materiality of this; that is why I have no questions.

MR. ZITTER: The materiality is, Your Honor, that Mr. or Mrs. Faye received $3500 on

the pledge of that ring, and I am just trying to bring out that it is not a minimal amount that we are talking about, in excess of $3500.

THE REFEREE: May I ask you, Mr. Katz, when you say that the value is $15,000 -- You saw it today, sir?

THE WITNESS: Yes.

THE REFEREE: Can you tell us by what standard you valued that, whether wholesale, retail or a broker's price?

THE WITNESS: Wholesale.

THE REFEREE: A wholesale price?

THE WITNESS: Yes. Today it is thirty per cent higher than before.

THE REFEREE: If somebody went to a reputable jeweler today, Mr. Katz, to buy that stone, you say he would pay about thirty per cent over $15,000?

THE WITNESS: Over $15,000.

THE REFEREE: Thank you.

(Witness excused.)

MR. ZITTER: At this time, Your Honor, I would like to read into the record various

portions of Mr. Faye's testimony, given on various occasions during the examination.

Before I do that, and off the record --

(Discussion off the record.)

MR. ZITTER: I would like to read from pages 6, 7 and 8 of the transcript of the adjourned first meeting of creditors, at which Mr. Faye was being examined, held on September 19, 1972 at 9:30 in the morning.

"Question: Well, do you recall if she purchased that ring within the three or four months within your filing your petition in bankruptcy?

"Answer: You mean after my petition?

"Question: No, before.

"Answer: I don't know exactly when she bought it, but I believe it was longer than that. I don't know exactly, but --

"Question: Was it a year before you filed your petition, September --

"Answer: I don't remember. She went out and bought the ring.

"Question: Where did she have the funds to purchase the ring?

"Answer; Well, she's always had some of her own money. She's always saved some of her own money. She's had her own account and she's saved some of her own money. And so she may have purchased it from that. Or it's possible that she would purchase it. She had accounts. She could buy --

"THE REFEREE: Have you any idea what she paid for it, Mr. Faye?

"THE WITNESS: I think what she told me when I asked her, she told me in the vicinity of --

"THE REFEREE: How much, Mr. Faye?

"THE WITNESS: I'm just trying to think. Somewhere about ten, or twelve, fifteen -- somewhere in that figure.

"Question: A thousand dollars?

"Answer: Yes.

"Question: Can you just try to concentrate, pin it down as to when you recall when she purchased that ring? I believe that the ring was originally pledged on June 22, 1971 to the Provident Loan Society.

"Do you recall how long Mrs. Faye had the

ring before it was pledged?

"Answer: Well, she must have bought it within the period of '71.

"Question: In the period of 1971?

"Answer: That's when she must have bought it. You see, Mrs. Faye would buy things and she wouldn't tell me right away when she had bought it. She'd buy a number of things and she did a lot of shopping I didn't know about. She'd do a lot of shopping on her own.

"Question: She'd keep a 10 carat diamond ring secretly?

"Answer: Well, it's possible she would keep a ring. She once bought a bigger item than that and didn't tell me for quite a long time.

"Question: To your knowledge, did Mrs. Faye purchase the ring with the intention of pledging it subsequently to obtain funds to --

"MR. LEINWAND: I object to that, Your Honor.

"THE REFEREE: Overruled.

"Answer: No.

"Question: No, she --

"Answer: She did not.

"Question: But you still can't recall when exactly she might have purchased it?

"Answer: As I told you, they wouldn't tell me. She would buy things that she wouldn't tell me when she bought it. She would tell me six months later, she would tell me.

"Question: Well, is it your recollection that this time she purchased it perhaps six months before June 22, 1971?

"Answer: It's in that period.

"Question: It's within six months of that period?

"Answer; Yes, must be within that period. I don't exactly recall when.

"Question: Were these times of financial difficulties for you, the six-month period before June 22, 1971?

"Answer: They were financially difficult for me.

"Question: Was your wife aware of your financial difficulties?

"Answer: She never knew too much about my financial difficulties. I never told her very much. My wife didn't know much."

I would also like to read, from the same transcript, from the top of page 12.

"Question: Mr. Faye, did you request your wife to pledge the 10 carat diamond ring on June 22, 1971?

"Answer: Yes, I asked her to.

"Question: She pledged the ring and turned the proceeds of the loan over to you for your use; is that correct?

"Answer: That's correct."

I would now like to read from the examination of Mr. Faye, in the same proceeding, which took place on July 5, 1972 at 10:00 o'clock.

Off the record.

(Discussion off the record.)

MR. ZITTER: "Question: Does your wife have any independent income?

"Answer: No. Well, she had some money of her own that she saved. As she went on, she would save. From the money she got from

me, she would put aside a certain amount of money. And if I need some, most likely she would give it to me, like she gave me her jewelry that I -- "

I would like to call Mr. Nat Faye.

N A T F A Y E , having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: Give the reporter your full name and your address, please.

THE WITNESS: Nat Faye, 2 Fifth Avenue, New York City.

DIRECT EXAMINATION

BY MR. ZITTER:

Q Mr. Faye, I would like to show you a schedule which you filed in this matter, and I direct your attention to page 2 of schedule A-3.

Do you see on that schedule an indebtedness to Gimbels?

A Yes.

Q In what amount?

A $16,465.02.

Q Does that amount represent the indebtedness for the 10.5 carat diamond ring which we have been

discussing?

A Well, the ring --

THE REFEREE: Mr. Faye, looking at that item of sixteen thousand some odd dollars, does that represent the balance due to Gimbels for the sale of the stone that has been the subject matter of the discussion here today?

THE WITNESS: To my understanding --

THE REFEREE: "Yes" or "no" or "I don't know."

THE WITNESS: Yes.

CROSS-EXAMINATION

BY MR. LEINWAND:

Q Mr. Faye, when you came up to discuss the filing of a petition in bankruptcy, did you speak to me?

A Yes.

Q Did you speak to Mr. Krause, my partner?

A Yes.

Q What did you tell us --

THE REFEREE: Just a moment, Mr. Leinwand.

Did Mr. Faye discuss that with you at the time that schedule was prepared?

MR. LEINWAND: Yes.

THE REFEREE: You are going to be a crucial witness on this matter, and the canons of ethics preclude an attorney who is a vital witness on a matter, from trying the case.

MR. LEINWAND: It was with myself and Mr. Krause.

THE REFEREE: Was it you, or Mr. Krause?

MR. LEINWAND: We were both together.

THE REFEREE: How can you possibly try this matter in this crucial stage of the proceedings?

Off the record.

(Discussion off the record.)

THE REFEREE: Let the record indicate that we have had some off-the-record discussion concerning the propriety of Mr. Leinwand trying this matter when it appears that he, potentially, might be an important witness with respect to this aspect of the case.

The trustee in bankruptcy does not feel that at this stage he wishes to press the point and, accordingly, we will continue.

BY MR. LEINWAND:

Q Do you recall the conversations with both myself and Mr. Krause in connection with whom your creditors should be?

A Yes.

Q Will you advise the Court what we said to you, and what you said to us?

MR. ZITTER: Objection, Your Honor.

THE REFEREE: Sustained.

Q I show you this schedule in bankruptcy. Are there other creditors in there on charge accounts in your wife's name, which you have listed as your obligation?

A Yes.

Q Besides Gimbels?

A Yes.

Q Will you please indicate which ones they are?

A I believe Jordan Marsh is one.

THE REFEREE: You believe or you know, Mr. Faye?

THE WITNESS: Your Honor --

THE REFEREE: You were asked a question by your attorney -- Please, this is a serious matter. Mr. Leinwand asked you to pick out those

creditors which are creditors of your wife and which you included in these schedules for some reason.

Are you now telling us, are you now stating under oath that Jordan Marsh is one that was your wife's creditor, that you did not make the purchase --

THE WITNESS: May I refer to this for a moment?

THE REFEREE: No. Please, just -- You do not know whether Jordan Marsh is one of your wife's creditors which are included in there because you felt that perhaps you should for some reason?

BY MR. LEINWAND:

Q Do you have anything, any records which would show who your wife owes money to, which you included in your schedule?

A Yes.

Q Please look at what you have, and if it refreshes your recollection, state what it is and explain to the Court what you are looking at.

A I'm looking at some of my wife's credit cards.

Q Read to us those names which are also on

your schedule.

A Bloomingdales--

THE REFEREE: Just a moment. The record will show that Mr. Faye has eight credit cards in his hand.

I want to know what creditors you claim he included in the schedules, on the advice of counsel that he might be responsible for.

Q Will you look at your list of creditors and tell me which of those obligations are your wife's obligations, but which you were advised that you, as the husband, might be liable for, and you were advised to include them.

A All right. Bloomingdales is one, B. Altman is another, Lord & Taylor, Macy's, I don't have to mention Gimbels --

THE REFEREE: If you will go back, how much was the obligation to Bloomingdales?

THE WITNESS: $1,000.44.

THE REFEREE: And B. Altman?

MR. LEINWAND: $855.14.

THE REFEREE: And Lord & Taylor?

MR. LEINWAND: $222.60.

THE REFEREE: And Macy's?

MR. LEINWAND: $30,105.

Q Will you continue, please, and tell us --

A Ginori --

THE REFEREE: How much?

THE WITNESS: $65.19.

A (Continuing) Neiman-Marcus, $972.49; Peck & Peck, $48.76; Bergdorf-Goodman, $1,967.65.

Q How about Saks Fifth Avenue?

A I see it here, but I'm not positive. I believe it was on my wife's name.

Q Did you have any charge accounts with any of those stores, or was it just your wife?

A I believe that -- I don't think I had them.

THE REFEREE: Do you know, Mr. Faye?

THE WITNESS: I don't believe I had any.

THE REFEREE: Do you know, Mr. Faye; yes or no?

THE WITNESS: With any of these stores that I mentioned, no.

Q With any of the stores that you mentioned, you had no charge accounts?

A No.

Q In the past, when your wife had these charge

accounts, did you pay the bills or did she pay her own bills?

A No, I paid the bills.

Q Over how long a period has she had charge accounts with these stores?

A Up to fifteen years.

Q When you came and discussed the situation with me, what did I say to you as to the listing of creditors?

MR. ZITTER: Objection.

THE REFEREE: Sustained.

Q After your discussion with me, did you then give a list of creditors which included the creditors who are Mrs. Faye's creditors on charge accounts?

A Yes, I did.

Q Even though you are not on the charge plates?

A Yes.

THE REFEREE: Did you discuss each and every one of these items with Mr. Leinwand?

THE WITNESS: Yes.

THE REFEREE: Will you tell us what you said to him and what he said to you.

THE WITNESS: I told him that my wife had

charge accounts on her name; she did the buying.

THE REFEREE: Let's go right to Gimbels. Did they, the attorneys, ask you what your $16,000 obligation to Gimbels was for?

THE WITNESS: Yes.

THE REFEREE: With whom did you discuss this; Mr. Leinwand or Mr. Krause?

THE WITNESS: I believe that the ring I discussed with Mr. Krause. I believe it was Mr. Krause.

THE REFEREE: You do not remember?

THE WITNESS: I don't really remember exactly which one.

THE REFEREE: Tell us what happened when you sat down for the preparation of these schedules.

First, how many times were you at their office when you were discussing the schedules, Mr. Faye?

THE WITNESS: I would say I was there about five times.

THE REFEREE: Finally, the time came when you put your signature on the schedules?

THE WITNESS: Yes.

THE REFEREE: Let's work back. You say that you were there about five times?

THE WITNESS: Yes.

THE REFEREE: On the fifth time you signed it?

THE WITNESS: Yes.

THE REFEREE: To whom did you first speak; Mr. Leinwand or Mr. Krause?

THE WITNESS: I spoke to Mr. Leinwand, first.

THE REFEREE: Did you discuss this item with him? Do you remember?

THE WITNESS: I believe -- yes, we discussed this item.

THE REFEREE: The Gimbels item?

THE WITNESS: Yes.

THE REFEREE: What did you say to him about the Gimbels item and what did he say to you about this item when you first discussed it?

THE WITNESS: I told him that my wife had purchased this ring and --

THE REFEREE: Did you tell him how much was

paid for it?

THE WITNESS: The amount of the ring, yes.

THE REFEREE: Did you tell him for what purpose she bought it?

THE WITNESS: I don't believe I told him for what purpose, no. I didn't tell him that she bought it for any purpose.

THE REFEREE: What did he say to you?

THE WITNESS: He said to me that I should put it down in my schedule, because as a husband I have to put down all -- everything that my wife owes as well as myself.

THE REFEREE: Did he mention, "necessary"?

THE WITNESS: I don't remember that, no.

MR. LEINWAND: Do you remember that I discussed with you a case where the question of "necessary" depended upon what the scale of living was? Do you remember that?

THE WITNESS: Yes, I remember that.

THE REFEREE: That refreshes your recollection?

THE WITNESS: Yes.

MR. LEINWAND: Do you remember that I gave

you the name of a case?

THE REFEREE: Do you remember Mr. Leinwand telling you about a certain case, a famous case?

THE WITNESS: I don't remember the name of the case. I remember him telling me about it.

THE REFEREE: What did he tell you?

THE WITNESS: He told me that if -- according to the standard of living, if it's a necessary, they can hold you responsible. Yes, I remember that.

MR. LEINWAND: As a matter of fact, I said that to some people a mink coat would be a necessary, and to others it would be a luxury? Do you remember that?

THE WITNESS: Yes, I do.

MR. LEINWAND: And I said, that with your background --

THE REFEREE: Did Mr. Leinwand ask you how many times before this, your wife had bought a $15,000 diamond ring?

THE WITNESS: Yes.

THE REFEREE: Did your wife, before this,

ever buy a $15,000 diamond ring?

THE WITNESS: Yes, she did, Your Honor.

THE REFEREE: How many times?

THE WITNESS: Twice, at least. At least twice, that I can remember.

BY MR. LEINWAND:

Q When did she buy the first one?

THE WITNESS: May I refer to this?

THE REFEREE: Surely.

A August 13, 1970.

THE REFEREE: Does she still have that ring?

THE WITNESS: No.

THE REFEREE: What became of it?

THE WITNESS: It was returned.

Q Where did she buy that ring?

A Hammerman Brothers.

Q Will you please tell the Court what happened in connection with that ring?

A She took the ring out --

Q How much was it?

A $22,000.

Q What happened --

A -- and she showed it to me sometime later. I looked

at it and I asked her to please return it.

Q Did she return it?

A She returned it.

Q What was the other incident where she purchased a ring?

A The other incident was from Neiman-Marcus. That ring was approximately $17,500.

Q When did that take place?

A I would say, about six months prior to that.

Q Prior to the Hammerman situation?

A Excuse me; I believe it was after that. I'm positive it was after.

Q What happened with that ring?

A When I saw it -- we really thought about that one. My wife wore it for a few days and then decided to give it back.

Q You asked her to give it back and she gave it back?

A Yes, she did.

THE REFEREE: When you spoke to Mr. Leinwand, Mr. Faye, did you tell him where the ring was?

THE WITNESS: Yes, I told him.

THE REFEREE: What did you say to him, and

what did he say to you?

THE WITNESS: I told him that the ring was put in there by mistake; I didn't know about it at that time. I explained all the circumstances.

THE REFEREE: When you say that it was put in there by mistake, it was put in where by mistake?

THE WITNESS: It was put into Provident by mistake.

THE REFEREE: Tell us about that mistake. What mistake?

THE WITNESS: My wife had purchased the ring. I was only up to Marcus once in my life. I was never there before.

My wife had purchased the ring. During that period, I had called her up to my office and I told my wife to put anything she has -- "I need some money immediately, because the bank is calling me for a shortage of money."

I said, "Whatever you got, put it in."

THE REFEREE: When was that?

THE WITNESS: That was on the date -- on that date, the date of the loan.

MR. LEINWAND: June 21st or June 22nd?

THE WITNESS: June 22nd. That June 21st and June 22nd seems to be strange to me, because my wife said that she had it more than one day.

MR. LEINWAND: Was it either one of those days?

THE WITNESS: June 22nd was the date that we took the loan.

THE REFEREE: You explained to Mr. Leinwand or to Mr. Krause that the ring concerning the $16,000 obligation had been pledged to Provident Loan? Is that what you are telling us?

Do you understand the question?

THE WITNESS: Yes, I understand, Your Honor. I told my wife to put it in. I didn't know she had the ring, and it was put in by mistake.

THE REFEREE: You mean, it was put in Provident by mistake?

MR. LEINWAND: May I lead him, Your Honor? I think --

BY MR. LEINWAND:

Q By "mistake," do you mean that you did not know that she was going to pawn that ring?

A At that time I didn't know she had the ring.

Q In other words, on June 21st, what did you say to her?

A I said, "Harriet, whatever you have in jewelry, please put it in. I need some money now."

Q You did not know that she had this particular ring at that time, in June --

A No, I didn't.

Q That is what you meant by "mistake"?

A That's what I meant.

Q When you spoke to me and told me about that, what happened? What did I tell you?

A You told me to take it out and call up -- speak to Gimbels, to tell them that I would like to return the ring, or any other way I could assure them that they were going to --

Q What did you do?

A I spoke to the credit man five times.

Q As a matter of fact, didn't I call up Gimbels in this connection?

A Yes. And I offered the ring -- to return it to them.

But, that's what I didn't know. I didn't know at that time that that was in, because I didn't know about the ring.

THE REFEREE: Provident Loan held the security for that $16,000 debt; is that correct?

MR. LEINWAND: No; Provident held that for a $3,500 dollar debt. They advanced him $3,500 against that, and they had the diamond.

But, when I found out, I said, "You go right down and get it back and give it back to them."

And not only did he call them a few times, but I called them.

BY MR. LEINWAND:

Q Let's go into the question of your being at Gimbels. Were you at Gimbels, with this salesman and Mrs. Faye, in or about June of 1971?

A Yes, I was.

Q Will you state what was purchased on that date? Was it about $500 worth of goods?

A It was approximately in that amount.

Q How much of that was subsequently returned?

THE REFEREE: Before we get to that --

You knew that your wife owed $3,500 to Provident Loan; is that correct?

THE WITNESS: Yes, I did.

THE REFEREE: Did you discuss that with Mr. Leinwand at the time the schedules were being prepared?

THE WITNESS: Yes, I did.

THE REFEREE: That was a debt of your wife?

THE WITNESS: Yes.

THE REFEREE: As far as you understood, you were responsible for her debts; is that right?

THE WITNESS: Yes.

THE REFEREE: Can you tell us why you did not list the debt to Provident Loan?

THE WITNESS: Because I believe I was told that it was a secured loan. I think that's what was said to me, it was a secured loan.

MR. LEINWAND: Was the security owned by your wife and not by you?

THE WITNESS: Yes.

MR. LEINWAND: Provident was not a creditor

of yours?

THE WITNESS: No.

THE REFEREE: Do you have your notes of this interview?

MR. LEINWAND: I do not think so.

THE REFEREE: Did you make notes at the time you interviewed Mr. Faye?

MR. LEINWAND: No, sir.

THE REFEREE: Did Mr. Krause?

MR. LEINWAND: Mr. Krause probably did.

THE REFEREE: Are you representing that you discussed that with Mr. Faye?

MR. LEINWAND: I discussed it with him, yes. The entire office did, because that bothered us no end at the time, originally, and we did advise him as to what was to be done with this ring.

Is that correct, Mr. Faye?

THE WITNESS: Yes.

THE REFEREE: Tell us who in their office you spoke to about this problem, Mr. Faye. You spoke to MR. Leinwand?

THE WITNESS: Yes, I --

THE REFEREE: And Mr. Krause?

THE WITNESS: And Mr. Krause.

THE REFEREE: And whom else?

THE WITNESS: I believe that was it.

THE REFEREE: Because Mr. Leinwand said it was discussed with the entire office.

THE WITNESS: And Mr. Hendler was called in and he discussed it.

MR. LEINWAND: That was a problem we discussed very seriously, Your Honor. However, in light of the fact that the ring was purchased by Mrs. Faye and was her property and was pawned by her, we felt that this was not an obligation -- talking about a legal --

THE REFEREE: She buys the ring and that is his obligation. Then she pawns it and borrows money and --

MR. LEINWAND: When we say that it is his obligation, we must advise the client as to the possibility of his being held --

THE REFEREE: May I see the schedule?

(Document handed to the Referee.)

BY MR. LEINWAND:

Q There is one store that we did not list, and that is --

A Fortunoff. --

Q We did not list them?

A We didn't list them and --

THE REFEREE: I call your attention to Schedule A-3: "The obligations of the bankrupt, set forth in the following schedule, were contracted in the City of New York in the regular course of business," and after that you list Gimbels.

If this was a subject of discussion among all the leading lights of your firm, it is rather difficult to understand why it is so listed if it is really a contingent claim.

MR. LEINWAND: If Your Honor please, we did not lie, because they are now suing him. That one is the ring, and we listed them. What we knew about, we listed.

And I say I would do it again under these circumstances.

THE REFEREE: At the adjourned hearing, we will hear from the person in your office who decided that a $15,000 stone was a necessary.

BY MR. LEINWAND:

Q -- Going back to the first visit, you were

present when certain jewelry was bought; is that correct?

A Correct.

Q Which was returned, or the greater part of that --

A The greater part was returned.

Q Did you ever go back to Gimbels again for the purchase of this diamond?

A Never in my life.

Q That salesman who was here, did you ever see him again?

A I never saw him after that one single time, never in my life.

Q When Mrs. Faye went to pick up the diamond, were you with her?

A No, sir.

Q Did you know about this diamond on June 21st or 22nd when you told her that you needed money?

A No, sir.

Q Did you know that she was going to pawn that diamond?

A No, sir.

Q Had she pawned her jewelry prior to this?

A Yes.

Q On how many occasions?

A About four occasions.

Q Had she given you the money on those occasions?

A Yes.

Q Did you use it in your business?

A Yes.

Q Did you always pay --

A I always repaid it.

Q In connection with these charge accounts for fifteen or twenty years, have you always paid the bills?

A Yes.

Q Was this the first time that you ever had financial trouble that ended up in bankruptcy?

A Yes.

MR. LEINWAND: That is all, Your Honor.

THE REFEREE: Mr. Faye, please tell me this: When did the stone first physically come into the possession of your wife?

THE WITNESS: You mean, when she had it in her hand?

THE REFEREE: You saw Mr. Bernard Choiley testify here today; is that correct?

THE WITNESS: Yes.

THE REFEREE: And you heard what he said?

THE WITNESS: Yes.

THE REFEREE: He testified that you and your wife, both of you, came to see him twice; isn't that what he said?

THE WITNESS: That's what he said.

THE REFEREE: What happened on the first occasion; did both you and your wife go to see him?

THE WITNESS: On the first occasion, yes.

THE REFEREE: At that time, did he show you that $15,900 piece?

THE WITNESS: No, sir, no, Your Honor.

THE REFEREE: That was when you bought the lapis piece?

THE WITNESS: The lapis piece and a ring.

THE REFEREE: What happened on the second occasion? Approximately what date was that, please?

THE WITNESS: Your Honor, I was not there for a second occasion. I have no knowledge of the second occasion. I never saw that man

again. He is positively mistaken.

THE REFEREE: On the second occasion, Mr. Faye, did your wife take the stone into her possession? Do you know?

THE WITNESS: She told me that she went up and she took the ring and she had it in her possession.

THE REFEREE: In June; is that correct?

THE WITNESS: Yes.

THE REFEREE: Had she bought it on a memo or a credit at that time?

THE WITNESS: She told me that she took it on a memo.

THE REFEREE: When was the memorandum to be confirmed; do you know?

THE WITNESS: I really don't know, because I was not there. But I know I got a call from this man --

THE REFEREE: Did your wife inform you that she had confirmed the memorandum?

THE WITNESS: She told me -- Yes, she told me she had purchased the ring.

THE REFEREE: Let's go back to June 22nd. Did you, at or about that time, know that your

wife had pledged that $15,900 stone for $3500?

THE WITNESS: No, Your Honor.

THE REFEREE: When did you first find out about that?

THE WITNESS: I found out about that -- I believe that the salesman called me about three days or four days after that -- it might have been a week after that -- and he said to me, "How do you like the ring?"

For a moment, I was very startled. He said, "Your wife bought a ring. How do you like it?"

But I was not surprised about my wife buying a ring, because it happened before. I always backed my wife through anything and always will back her.

I said, "I will call you back."

Then I went to my wife and she said, "Yes, I bought the ring, but you told me to put everything in. I put that in, too."

And I was very upset, extremely upset at the moment.

THE REFEREE: Did you call him back and

confirm the memorandum?

THE WITNESS: Then I called him back.

THE REFEREE: What did you say to him, and what did he say to you?

THE WITNESS: I said to him, "Could you give us the ring for less money?"

Because at that time, I felt that once we had it and that mistake was made, she was going to have the ring, she will buy that ring.

So, I asked him if he could give it to me for less money, the diamond. You can sometimes talk about that.

I started to negotiate for her, and he said no, he couldn't do it for less.

THE REFEREE: By this time, you knew that it had been pledged for $3500?

THE WITNESS: Yes, I knew it then.

REDIRECT EXAMINATION

BY MR. ZITTER:

Q Mr. Faye, I would like to show you Exhibit 3 in this matter and ask you, with respect to this top part, whether that is your printing where the words --

A Up on top?

Q Right here. (Indicating)

A No, that's not mine, no.

Q Were you present when that was written down?

A No, sir, definitely not. You mean this? You are talking about this? (Indicating)

Q Were you present when any part of this application was taken down?

A I was present only for this part; Nat Faye, 6 Harrison Street, Security National Bank, Washington, and my signature.

Q Those items which you read are in your handwriting?

A Yes.

Q To the best of your knowledge, were those items written at the same time when that top portion was written?

A It was not written at the same time.

Q Do you know when the top portion was written?

A I have no idea.

Q Why were you requested to fill out the items which you stated were in your handwriting?

A When I was up to Gimbels with my wife, my wife had walked over to the Marcus department. She had

charged other items there in the past.

I was just walking around as I always do, and she called me over. She wanted to buy -- My wife called me over to the salesman. She had picked out --

Q Mr. Choiley?

A Yes, that man. She called me over, and he said, "Mr. Faye, we would like to reconfirm your account with your name and address," to be sure that we are Mr. and Mrs. Faye.

The card does not give an address.

THE REFEREE: Just a moment.

Mr. Choiley was not trying to verify that you were married?

THE WITNESS: No.

THE REFEREE: What did he say?

THE WITNESS: He said that he wanted to reconfirm our card, because we showed him -- Mrs. Faye showed her credit card.

He said, "Would you please put down your firm name and address and your bank and sign it over here."

I was there with my wife, and I did that.

BY MR. ZITTER:

Q Which items of jewelry were under discussion

at that time?

A The first time I was there, the only time I was there -- the small amounts.

Q Mr. Choiley wanted to reconfirm your credit for approximately $500?

A He didn't say -- he said he wanted to be sure that I am Mr. Faye. He didn't use the word "credit."

Q Had you ever been asked to have your credit reconfirmed at Gimbels before?

A No.

Q Or at any other department store?

A No.

THE REFEREE: How did you get into that discussion?

May I see that, please?

THE WITNESS: He said that he wanted -- he would like to know my firm name. He said that he wanted to verify that with upstairs, to see if it checks out the same way.

THE REFEREE: Are you telling us, Mr. Faye, that they were not satisfied with your wife's credit, and they wanted to know whether you would be good for the debt?

THE WITNESS: No. The way I interpreted it,

Your Honor, is that he wanted to be sure that we didn't find this credit card in the street. And by checking the name of the company --

THE REFEREE: This would have been proper for examination when Mrs. Goodman was here, but she has gone.

THE WITNESS: I never met Mrs. Goodman; I never saw her. The only one I ever saw at Marcus, once in my life, was that man when my wife called me over.

She picked her own things. I didn't stay over at the counter; I was walking around near it.

When he came back -- he must have spoken to someone upstairs, and he came back and said, "Mr. Faye, will you please do this for me. Just your firm, your address and the name of your bank, and sign it."

I had no reason not to.

BY MR. ZITTER:

Q Was the top portion filled out when you signed it?

A I never saw anything else on here, except what I filled in.

Q You signed a blank card?

A I signed a blank card. That was blank, except what I filled in there, in my own handwriting.

Q They present you --

A He presented me with a blank card.

Q And you filled that in?

A Yes; that's all he asked me to do.

THE REFEREE: Was that Mr. Choiley?

THE WITNESS: Yes, it was this man that was sitting here.

To me, it seemed that they had problems with lost cards, and they were just checking to see that we were Mr. and Mrs. Faye.

May I also say this: Before we went there, we went into the store and bought some little item, nothing to mean anything, like a pot. Mrs. Faye presented her card and they pushed a button and that went through.

When it came to this, this seemed to be a check or something -- I don't know. That's what they handed me.

BY MR. ZITTER:

Q I believe you testified that there were two prior occasions on which your wife purchased rings in

excess of $15,000?

A Yes, I did.

Q Is it correct that on those occasions Mrs. Faye did not actually purchase them, but she took them on account and returned them?

A Mrs. Faye, by herself, went and purchased them. I don't know if my wife understands what a memo is, but she took the ring and would bring it home, and sometimes two weeks later would show it to me. And there were two other occasions, the names I mentioned.

Q On both occasions the rings were returned?

A Positively.

Q Without any payments made, by you or Mrs. Faye, for the rings?

A That is correct.

Q I believe, in answer to Mr. Leinwand's question, you listed several department stores to which your wife became obligated for certain purchases. To your recollection, other than Macy's and Gimbels, were there any obligations, other than for clothing for your wife or women's specialty items, incurred at these stores?

A Honestly, I don't know what my wife bought. I have no idea what she would buy. She would go by

herself, and she would buy whatever she wants.

I never checked through each item that she bought.

Q I would like to clarify one point of your testimony which is not clear in my mind.

You testified that the 10-carat diamond ring was pledged to Provident by mistake, if I recall?

A Yes, I said, "By mistake."

Q I would like to read a portion of your prior testimony and ask you to either explain it or --

MR. ZITTER: I am now reading from page 12 of the September 19, 1972 examination of Mr. Faye.

Q "Question: Mr. Faye, did you request your wife to pledge the 10-carat diamond ring on June 22, 1971?

"Answer: Yes, I asked her to.

"Question: She pledged the ring and turned the proceeds of the loan over to you for your use; is that correct?

"Answer; That's correct."

A Yes, sir.

Q Is that still your testimony?

A What I meant by that is, when I called her and said, "Put everything you have in there" -- that's what

I meant by "mistake."

That was part of it. So, I had to answer yes or no. "Yes, I did." To me, that's the only answer I could give.

MR. ZITTER: I have no further questions.

RECROSS-EXAMINATION

BY MR. LEINWAND:

Q Mr. Faye, when you saw Mr. Choiley the first time, did he show you this ten and a half carat diamond ring?

A Positively not.

Q Did he discuss the diamond ring with you or Mrs. Faye?

A No.

Q And you definitely did not go back there again?

A I never saw that man before or after.

Q On June 21st or 22nd you did not know anything about this diamond ring?

A No, sir.

MR. LEINWAND: That is all.

THE REFEREE: Does your wife have any source of income other than what you give her?

THE WITNESS: No, my wife --

THE REFEREE: Is she independently solvent? Does she have assets other than what she receives from you, Mr. Faye?

THE WITNESS: She has no assets.

MR. LEINWAND: He already testified to that, Your Honor.

THE REFEREE: So that when she bought this ring on memorandum, this 10-carat ring, as far as you were concerned that was her property? And when she pledged it for $3500, that was hers?

THE WITNESS: No; if I would have known, I would not have put that ring in, that ring would not have gone in.

THE REFEREE: What would you have done with it?

THE WITNESS: I would have returned the ring like I returned a $50,000 ring. I always returned the rings. I never --

THE REFEREE: On June 22, 1972, the pledge was renewed?

THE WITNESS: Correct.

THE REFEREE: Would you tell us the circum-

stances that led to that?

THE WITNESS: I knew that the interest was due on the ring, and if you don't pay the interest, the ring would be lost. And I figured that some day, I hope, my wife is going to pay Gimbels for this ring, and not to lose it for a pledge of $3500.

I knew that it's worth more than that. I felt that it was an obligation to do that. It was an obligation to me, because of the fact that she didn't pay for it.

So what if we have to return it? We have to keep the pledge going. Otherwise, I felt that Provident would take it, which would be wrong.

I spoke to the credit man four or five times and told the credit man that I want my wife to have it.

"She is going to do everything in her power to pay for it. Just have a little time, a little patience."

THE REFEREE: When did the conversation take place?

THE WITNESS: I would say it took place in

the period of three months after I filed --

THE REFEREE: But Gimbels was not suing your wife on this debt?

MR. LEINWAND: Gimbels is suing for goods sold and delivered.

THE WITNESS: We returned a $50,000 ring at one time, that my wife had --

MR. LEINWAND: It was returned?

THE WITNESS: It was billed to her and returned.

THE REFEREE: Is there anything else?

MR. ZITTER: May I state that suit was commenced against Mrs. Faye --

MR. LEINWAND: The summons is dated April 18, 1972. I do not know --

THE REFEREE: Off the record.

(Discussion off the record.)

MR. LEINWAND: I have been in touch with Gimbels and have discussed the situation with them, and we know where we are going.

We have offered to do several things, Your Honor. The trouble is, Marcus is not Gimbels. Marcus is a concession in Gimbels.

THE REFEREE: It is a leased store, but

nevertheless, they deal with Gimbels.

MR. ZITTER: May the record reflect --

Off the record.

(Discussion off the record.)

MR.ZITTER: I have no further questions of Mr. Faye.

THE REFEREE: All right, Mr. Faye.

(Witness excused.)

MR. ZITTER: Your Honor, I would like to move to the second specification and call Mr. Bernard Augen.

B E R N A R D L . A U G E N , having been first duly sworn by the Referee, was examined and testified as follows:

THE REFEREE: Give the reporter your full name and your address, please.

THE WITNESS: Bernard L. Augen, 18-15 215th Street, Bayside, New York.

DIRECT EXAMINATION

BY MR. ZITTER:

Q Mr. Augen, what is your occupation?

A CPA.

Q By whom are you employed?

A I am not employed; I am a partner in the firm of

Simonoff, Peyser & Citrin.

Q Did you examine all the personal records which Mr. Faye has provided me with in this proceeding?

A Yes, I did.

Q Did you also examine certain of the corporate records which you took from the corporate offices sometime in January 1972?

A Yes, I did.

Q How long have you been a practicing accountant?

A About seventeen years.

Q Do you have a specialty in the accounting field?

A I specialize in bankruptcy and in insolvency.

Q I show you the schedules which Mr. Faye has filed in this matter and call your attention, particularly, to Schedule A-3.

On the basis of your examination of the aforementioned records, were you able to determine the accuracy of the debts listed in that schedule?

A No, I was not.

Q Did you find any documents which would aid you in determining the accuracy of the items listed in

Schedule A-3?

A No, there were none.

Q Mr. Augen, I direct your attention to an item which was marked Trustee's Exibit 16 for Identification in the previous hearing, and which will now be marked Trustee's Exhibit 4 for Identification.

(Checkbook, previously marked Trustee's Exhibit 16 for Identification, marked Trustee's Exhibit 4 for Identification, as of this date.)

Q Is this one of the documents you examined in connection with your study of the Nat Faye petition?

A Yes, it is.

MR. ZITTER: I offer it in evidence.

MR. LEINWAND: What is that?

MR. ZITTER: A checkbook.

MR. LEINWAND: No objection.

(Trustee's Exhibit 4 for Identification received and marked Trustee's Exhibit 4 in Evidence, as of this date.)

Q From your examination of Trustee's Exhibit 4, Mr. Augen, were you able to determine the source of any of the funds which were deposited in that account?

A Just from this? You are asking me whether I was

able to determine the source of deposits from examining this record, only?

Q Or other records.

A From other records --

MR. LEINWAND: Objection.

THE REFEREE: Sustained.

Q From examining that record, only.

A No.

Q Did you attempt, as best you were able, to match up the checks which came out of the various accounts of Mr. and Mrs. Faye, with their personal bank statements?

A Yes, I did.

Q Can you tell us the results of that investigation?

A We were able to identify certain deposits into the Nat Faye Manufacturers Hanover account, the Nat Faye and Harriet Faye Security National Bank account, and the Harriet Faye Manufacturers Hanover account, number 1-06025.

We were not able to identify them all conclusively, but approximately $114,000 of deposits were made in those three accounts, of which approximately $112,000 must have come from the various corporations of which

Nat Faye was a principal stockholder.

We were able to identify everything but about $30,000 of deposits.

Q From your examination of the corporate records of Mr. Faye and the personal records of Mr. Faye, what was the total amount of deposits into the personal accounts of Mr. Faye that you could not trace to a source?

MR. LEINWAND: He said, about $30,000.

A $30,751.82

Q Were you able to break that down between Harriet Faye and Nat Faye?

A Yes.

Q Would you please give us that breakdown?

A Nat Faye, Manufacturers Hanover, account number 5-020887, $5,249.66.

Nat and Harriet Faye, Security National Bank, account number 383-03023, $13,017.40.

Harriet Faye, Manufacturers Hanover, account number 1-06025, $12,486.86.

Q Those, again, are deposits, the source of which you could not trace; is that correct?

A Yes.

Q From your examination of Trustee's Exhibit 4,

Mr. Augen, were you able to determine what the checks were in payment of?

A No, I was not able to.

Q From your examination of any other documents provided by Mr. Faye, or his corporate records, were you able to determine what the checks were in payment of?

A No, I was not able to.

THE REFEREE: I see check number 4 -- Con Edison.

THE WITNESS: That's the only thing --

THE REFEREE: You do not have to be a CPA --

THE WITNESS: Your Honor, what I am trying to bring out, there are no explanations of what these payments are for.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Let's go back on the record.

MR. ZITTER: I have no further questions.

THE REFEREE: Is it a fair statement that, apparently, the bankrupt and his wife mixed, in Trustee's Exhibit 4, their usual and ordinary household expenses together with

business expenses, and where blanks appear, it is impossible to ascertain whether they were personal or business expenses?

THE WITNESS: Your Honor, we do not know.

CROSS-EXAMINATION

BY MR. LEINWAND:

Q Mr. Augen, you are an accountant with experience in bankruptcy matters; is that correct?

A Yes.

Q Is it a fact that the bankrupt and his accountant cooperated with you?

A Yes.

Q And is it also a fact that whatever books and records you asked for, you obtained?

A Yes.

Q Did you obtain all of the canceled vouchers of Mr. and Mrs. Faye?

A There were some canceled vouchers which were unobtainable, and they got us photostatic copies of the bank statements, only.

Q Did you obtain income tax returns?

A I saw some, yes.

Q Did you obtain agreements with various

parties?

A We saw some agreements with various parties, at the premises. We didn't remove them.

Q The trustee had agreements. Did he show them to you, or did you ask him about that?

A I looked at them this day.

Q Did you notice that certain requirements for moneys in connection with those agreements, came from Harriet Faye and/or Nat Faye?

A I don't remember seeing anything like that.

Q With respect to this checkbook, where you say that you could not determine what the checks were for, does every stub indicate the name of the payee?

A Not all of them.

Q Show me one that does not --

A Here (indicating).

Q You mean, there are checks -- there are no stubs for them?

A That's right. Here are checks taken out with no indication --

Q With no indication on any stub?

A No.

Q But let's take the stubs that indicate --

A These pages --

Q Every stub there, Mr. Augen, shows to whom it was issued?

A Right.

Q According to your statement, you could not determine where some of the deposits came from?

A Yes.

Q But you could determine all of the disbursements?

A Let me clarify that, if I may. We were not able to determine where the deposits in that particular exhibit came from.

What we were able to determine -- looking at corporate records, we saw checks to Nat Faye, Harriet Faye and the combination. And I was able to take those checks, and by comparison, I was able to identify them.

Q From the records given to you by Nat Faye and/or his accountant, you were able to determine his financial condition; were you not?

A No, I was not. I was able to determine what the sources of these deposits were.

Q Then what could you not determine?

A I could not determine what his liabilities were.

Q Were you looking for bills?

A I don't know.

Q Did the trustee ask you for bills?

THE REFEREE: Excuse me. If I may, the test is not what the trustee asked for.

Mr. Augen, Mr. Faye is an individual who did business under a certain corporate form?

THE WITNESS: Yes.

THE REFEREE: Did you have made available to you the corporate books and records --

THE WITNESS: Yes, they were --

THE REFEREE: -- and also, his individual books and records, to the extent that he had them?

THE WITNESS: Yes, books and records were made available.

THE REFEREE: Are you able to tell us, in your experience as an accountant, whether you could determine, from the books and records that were turned over to you, his financial condition?

THE WITNESS: No, I could not.

THE REFEREE: And his business transactions?

THE WITNESS: His business transactions I could determine, but I could not determine his personal condition.

THE REFEREE: The corporate records were in good shape?

THE WITNESS: Yes, sir.

THE REFEREE: Did they show disbursements of the profits that were generated from the corporate activity?

THE WITNESS: It was not profits that were disbursed. It was loans and salaries and travel and entertainment that was disbursed to Mr. and Mrs. Faye.

THE REFEREE: Did all of these funds funnel into the personal account?

THE WITNESS: On a total basis, Your Honor, we determined that most of them did go into the personal account.

BY MR. LEINWAND:

Q Did you also determine, when he filed the petition in this case, that little or nothing was left in the personal account?

A Yes, because the bank statements showed little or nothing in them.

We were able to determine that the moneys that came out of the business, one way or another went in here. $30,000 we could not identify.

THE REFEREE: By "went in here," you mean, into Trustee's Exhibit 4?

THE WITNESS: Exhibit 4 and two other accounts.

Q From your experience in the bankruptcy field, Mr. Augen, for an individual bankrupt, did you get books and records here which are at least as good as, if not better than the average bankrupt?

A I got the books and records of the average bankrupt.

Q Mr. Augen, this has just been given to me, and I would like to show you -- Do you notice that on these stubs they do not have just one entry, Village Home Shop, but on one stub they have Village Home Shop and Dunhill, and the next one has Bloomingdales and Bonwit Teller on one stub?

They would take blanks, and then, when they made out these stubs, they would make them out in duplicate or triplicate.

A I see.

Q With that information, does that explain

the blank stubs?

A Yes.

MR. LEINWAND: Does Your Honor wish to see that?

THE REFEREE: No, it is not necessary for me to --

Q In addition, on the question of the canceled vouchers, were all the canceled vouchers of the various banks turned over to you, with a few exceptions?

A Yes.

Q As to those few exceptions, when you got the photostats of the statements, were there any large amounts involved?

A No.

MR. LEINWAND: That is all, Your Honor.

THE REFEREE: Anything else?

MR. ZITTER: No, Your Honor.

THE REFEREE: Thank you, Mr. Augen.

(Witness excused.)

THE REFEREE: I am dismissing the second specification of the objections. From all of the testimony, it appears that the mere failure to enter items in the check stub book is not

an act within Section 14C2, and in view of the fact that the canceled checks were made available.

This entire matter is fortified by the fact that Mr. Augen has testified -- and I recognize him as an expert from his activities in this Court -- that these are the type of records kept by the usual bankrupt.

There is nothing outrageous in the way these books and records have been kept.

I do find, however, that the trustee has established reasonable cause with respect to the first and third specifications of the objections, and the bankrupt is obligated to come forward under all of the facts and circumstances.

We have a housewife who purchases a $15,900 ring, and it will require some explanation as to how the bankrupt deems that this is the property of his wife and not his. That is under the first specification.

Under the third specification, I believe that the testimony establishes that reasonable cause has been shown to support that.

Therefore, all we have to do, gentlemen, is get a date for the bankrupt to come forward and attempt to sustain the burden of proof which has been cast upon him.

(Whereupon, the hearing was adjourned.)

* * *

Certified to be a true and accurate transcript of the proceedings in this matter.

Dan Siedman

Reporter.

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* * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
IN BANKRUPTCY

- X

IN THE MATTER :

of :

NAT FAYE d/b/a EHENENS TRADING, : 71 B 903

:

Bankrupt.

- X

United States Court House
Foley Square
New York, New York

September 7, 1973
10:30 o'clock a.m.

ADJOURNED SPECIFICATIONS OF OBJECTIONS TO DISCHARGE

B E F O R E :

HON. EDWARD J. RYAN,

Referee in Bankruptcy

BARRY W. RAYVID
OFFICIAL COURT REPORTER
U.S. COURTHOUSE (R.230)
FOLEY SQUARE, N.Y. 10007

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BY: ISIDOR E. LEINWAND, ESQ., Of Counsel

- - - - -

P R O C E E D I N G S

E L L I O T K R A U S E, having been duly sworn by Honorable Edward J. Ryan, was examined and testified as follows:

THE REFEREE: Please give your full name and home address to the reporter.

THE WITNESS: Elliot Krause, 320 East 23rd Street, New York, New York.

DIRECT-EXAMINATION BY MR. LEINWAND:

MR. ZITTER: Your Honor, before

testimony begins in this matter I have a preliminary motion which I would like to address to the Court.

As I understand the thrust of the bankrupt's case here the proof will revolve mainly around facts which occurred in meetings mainly held between the bankrupt and his attorney or between the bankrupt and his wife at which no other people were, in all probability, present.

In light of the fact what we are going to be hearing is mainly what transpired at meetings in which nobody else was present I think it would be appropriate to exclude all other witnesses from the courtroom while Mr. Krause and others are testifying.

MR. LEINWAND: The only one to testify is Mr. Krause outside of Mrs. Faye. I am not going to testify.

That was the understanding I had with the Referee the last time, if I tried the case I can't testify. Since I am trying it Mr. Krause was present with me at all

of the discussions will testify.

MR. ZITTER: If Mrs. Faye is going to testify I would address the request to her.

MR. LEINWAND: But, she did not participate in any of these meetings.

THE REFEREE: Any objections, Mr. Leinwand?

MR. LEINWAND: I have no objection.

THE REFEREE: Then the application is granted.

MR. LEINWAND: Mrs. Faye, would you kindly leave. I merely wanted to point that out.

Q Mr. Krause, are you an attorney practicing in this court?

A Yes, sir.

Q Duly admitted?

A Yes, sir.

Q Are you a member of the firm of Leinwand, Maron, Hendler & Krause, the attorneys for the bankrupt in this proceeding?

A I am.

Q Did you participate in the preparation

of the schedules in this matter and did you participate in the discussions with Mr. Faye when he first arrived in the office?

A I did.

Q Will you state to the best of your recollection what transpired in connection with the filing of this petition in discussions with Mr. Faye?

A Well, I met with Mr. Faye and I think you were present at several of the meetings - - I don't know whether you were present at all of them. My recollection is, although I have no written records of my meetings with him, that I conferred with him on possibly two or three occasions in connection with a series of bills that he had given me and a list of creditors that he had given to me which were his unsecured debt.

I questioned him not at great length but to some extent about various items and he brought to my attention that some of these debts were also debts of his wife or, at least, he thought they were. I said that I saw no reason why they shouldn't be included.

In fact, I recommended that they be

included, and they were included in the schedules prepared. To a great extent the debts that I am referring to now were debts owing to various department stores and I think were evidenced to some extent by charge accounts which I think were in the name of [illegible] and, possibly, in his name but I am not certain.

Q I show you nine charge account plates and ask you if that refreshes your recollection as to whether these were the accounts that he discussed with you?

A Yes.

MR. ZITTER: Are these going to be marked?

MR. LEINWAND: I will be glad to mark them. I will read them all - - Gimbels, Mrs. Nat Faye; Bloomingdales's, Mrs. Nat Faye; A&S, Mrs. Nat Faye; Nieman-Marcus, Mrs. Nat Faye; Macy's, Harriet Faye and Mrs. Harriet Faye; B. Altman & Company, Mrs. Nat Faye; Gimbels, another one, Mrs. Nat Faye - - it may be a duplicate - - there are two types of charge accounts, one is a thirty-day account and one is an extended payment

account.

Lord & Taylor, Mrs. Nat Faye; Diner's Club, Harriet Faye; Bank Americard, Harriet Faye.

MR. ZITTER: May I see them, please?

A By the way, Mr. Leinwand, I don't know whether Mr. Faye had those charge plates with him at the time. I don't think he did.

THE REFEREE: Did you ever see those charge plates before, Mr. Krause?

THE WITNESS: I don't think so.

THE REFEREE: Well, Mr. Leinwand, I tell you I think this is - -

THE WITNESS: May I say this, Your Honor - -

THE REFEREE: Mr. Krause, tell me how those charge plates could possibly refresh your recollection as to the debts of Mrs. Faye that Mr. Faye mentioned to you when he came to your office?

THE WITNESS: Because he mentioned the names of various department stores.

THE REFEREE: Would you read those department stores, Mr. Leinwand?

MR. LEINWAND: B. Altman & Company, Macy's, Nieman-Marcus, A&S, Bloomingdale's, Gimbels Department Stores. Those are the department stores.

THE REFEREE: But for those cards, Mr. Krause, you would not have recalled those department stores?

THE WITNESS: Not at all, Your Honor.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: Would you give us the names, Mr. Krause, of the department stores as to which you are now refreshed?

THE WITNESS: I remember discussing with Mr. Faye Bloomingdale's, Altmans, Gimbels and one other - - I can't recall.

THE REFEREE: Your recollection is not refreshed by seeing what is to be deemed marked as Bankrupt's Exhibit "A", a group of credit cards?

MR. LEINWAND: It is refreshed to the extent of the ones I have shown him. He recalled the particular names that were discussed with Mr. Faye. That is refreshing

his recollection.

THE REFEREE: There were three stores.

MR. LEINWAND: Gimbels, he said - -

THE WITNESS: There was Altmans - -

THE REFEREE: Just a minute, Mr. Krause. So, then, as a result of Bankrupt's Exhibit "A" deemed in evidence your recollection is refreshed that you discussed four creditors of Mrs. Faye when you interviewed Mr. Faye - - Bloomingdale's, Gimbels, Altmans and one other, am I correct?

THE WITNESS: That is correct.

Q In connection with that discussion did you advise him, or did you discuss this with anyone else, as to whether or not Mrs. Faye's obligations to various department stores should be included in Mr. Faye's petition?

A First I discussed it with Mr. Faye and told him why I thought it should be included. Then I discussed it with you.

Q Did I participate in the discussions thereafter?

A Yes.

Q Will you state to the Court what your

position was as far as the inclusion is concerned or non-inclusion?

A I said to Mr. Faye that it was my opinion, possibly out of an expression of caution, that these obligations should be set forth in his schedules for two or, possibly, three reasons.

Number one, was the fact that he might be held liable for Mrs. Faye's obligations by reason of the fact that they lived on such a scale and he had such a substantial income that they might be deemed to be necessary for which he would be liable.

Number two, I asked him whether or not he had been sued or whether he had received letters from some department stores, some of these department stores, asking for payment of these debts. He didn't know at the time. I said, "I think you ought to find out."

Then, he also told me that in the past he had assumed that these obligations were his and had paid similar obligations.

Q Did he tell you that he had always paid his bills?

A Well, he told me - -

THE REFEREE: Did he, yes or no,

Mr. Krause?

THE WITNESS: He didn't say it in those words. I will tell you what he did tell me.

Q Pleas. tell me.

A He told me on occasion he felt he was liable for certain of her bills and he paid them.

Q You then advised him to include her charge account creditors in his petition?

A I said to him this is my recommendation to you and I would like to discuss it with you and Mr. Leinwand. We did so and we concluded it would be the best policy to include them in his petition.

Q When you discussed it with me did I bring in a case involving necessaries and that I thought - -

A Yes, I will tell you the name of the case you brought in.

Q What was it?

A Susan Rosensteil.

Q In which the husband had been found liable on the grounds they were necessaries even though they were substantial?

A I don't know whether he had been found liable. He certainly had been sued by various credi-

tors.

Q I pointed out I was involved in the case and he had been found liable?

MR. ZITTER: Objection.

A I believe you did.

THE REFEREE: Sustained.

Q As a result of those discussions did you prepare the petition in bankruptcy on behalf of Mr. Faye?

A Yes.

Q In that petition did you include department store creditors who were Mrs. Faye's creditors on Mrs. Faye's charge accounts?

A Yes, I did.

MR. LEINWAND: I have a copy of the petition, Your Honor. I don't know whether you want to use the original. Is there any objection if we use my copy?

MR. ZITTER: I don't think so as long as it complies with mine.

Q I show you this petition and ask you whether this is a copy of the petition which was filed in this proceeding?

A Yes, it is.

Q Do you see department store creditors that are listed in that petition?

A Well, there is Bloomingdale's, Altmans, Abraham & Strauss, Gimbels, Lord & Taylor, Macy's, Nieman-Marcus, - - I don't know whether you consider this a department store, Peck & Peck, Saxs Fifth Avenue, Bergdoff Goodman.

Q Did you say "Gimbels?"

A Yes, I did.

Q Are these creditors included in the charge plates which are deemed marked as Bankrupt's Exhibit "A"?

A I don't know what - -

MR. ZITTER: I think the exhibits speak for themselves. If they do they do, if they don't they don't.

Q It was based upon your advice and my advice that Mr. Faye signed these papers stating these among his liabilities?

A Well, I said something else to him at our initial meeting and that was I would rather be on the side of ultra-conservatism rather than leave them out and have somebody make a charge we weren't filing proper schedules, they could be con-

sidered false schedules.

Q Isn't it a fact, Mr. Krause, that one of the creditors of Mrs. Faye, Fortunoff, we did not list through and error and to your knowledge they sued Mr. Faye?

A Yes, they did.

Q Subsequent to the filing of the petition?

A Yes, they did.

Q Were you present when I spoke to Mr. Faye about the Gimbels situation?

A You will have to be more specific, Mr. Leinwand?

Q Were you present when we discuseed the fact that the ring - -

THE REFEREE: Is Mr. Krause going to testify, or are you, Mr. Leinwand?

MR. LEINWAND: I am asking him if he was present?

THE REFEREE: Sustained, Mr. Zitter.

MR. LEINWAND: I can't ask him if he was present?

Q Do you recall a conversation with Mr. Faye and myself in connection with a ring purchased

from Gimbels?

A I don't recall, Mr. Leinwand.

MR. LEINWAND: That's all.

CROSS-EXAMINATION BY MR. ZITTER:

Q Mr. Krause, when did this Nat Faye bankruptcy first come to your attention in point of time?

A Well, I think the petition was filed sometime in September of '71. So, I can only assume that I talked to him prior to the date and, possibly, two or three weeks prior to the time it was filed.

Q Do you know whether that's the fact or are you just assuming?

A I can't tell you it's a fact. I am assuming that. This is standard operating procedure.

THE REFEREE: Did you know you were going to testify today, Mr. Krause?

THE WITNESS: Sure.

THE REFEREE: Does your office keep files of bankruptcy matters such as this?

MR. KRAUSE: Yes, sir.

THE REFEREE: Would that not have indicated the date when you interviewed the bankrupt?

THE WITNESS: I looked for that date.

THE REFEREE: Did you examine the file?

THE WITNESS: Very definitely. It does not indicate the date that I first met Mr. Faye.

THE REFEREE: Does it indicate the date of the bankruptcy petition being filed?

THE WITNESS: Yes.

THE REFEREE: Did you make any notes when you spoke with Mr. Faye?

THE WITNESS: I think I have one note that I found in the file in my handwriting. That's all I discovered.

Q How many times did you speak with Mr. Faye in the approximately two to three weeks before he filed his bankruptcy petition?

A I would say two to three times. I think I met him twice and then I met with him when Mr. Leinwand was present. I think the reason for the three meetings - -

Q I just asked how many?

A I think three times.

Q Did you have primary responsibility

for preparing these schedules?

A No.

Q Who did have primary responsibility?

A I don't know that anybody had primary responsibility.

Q I think you mentioned you met with Mr. Faye about a list of creditors?

A Yes, he gave me unpaid bills.

Q Did you meet with Mr. Faye about the list of his assets?

A Yes, I assume I did.

Q Do you recall or don't you recall?

A I just don't recall. I know I prepared schedules and the assets to the extent he had any are listed in the schedules.

Q You said you prepared schedules. You also said you did not have primary responsibility for doing it for which I assume somebody else had primary responsibility?

A I will disagree with your characterization of "primary responsibility". This was Mr. Leinwand's matter. He asked me if I would assist him in preparing the schedules. This was the reason for discussing this with him at a subsequent date.

Q Which problem are we discussing, the fact he had to include large accounts of his wife?

A Principlely that.

Q You said you recalled three particular or, perhaps, four particular charge accounts?

A I said I know of three, I can't recall the fourth. There was the Gimbels, Altmans, and Bloomingdale's. For some reason they stick in my mind.

Q When you discussed the Bloomingdale's situation what did you ask him?

A He told me that his wife had purchased certain merchandise at Bloomingdale's or Altmans and I said, "Do you regard this as your obligation; did you ever pay these charges before?" He said, "Yes." I said, "I think you ought to include these obligations in your schedules."

Q It was based on Mr. Faye's characterization that he felt he was liable - -

MR. LEINWAND: I object.

THE REFEREE: This was this man's testimony.

Q Was it based on Mr. Faye's characterization of this?

A No, it was based upon the facts given to me and my interpretation of what the law might be.

THE REFEREE: What did he tell you?

THE WITNESS: He told me his wife had certain charge accounts, that she had made certain purchases, that he thought he might be liable, and he told me that he had paid these charge accounts in the past. He didn't have to tell me.

THE REFEREE: Mr. Krause, have you heard of the rule under the laws of New York State that a man is obligated to furnish his wife with necessaries?

THE WITNESS: Yes, sir.

THE REFEREE: In your inquiry with Mr. Faye did you make any inquiry to ascertain whether the obligations were necessaries?

THE WITNESS: I think I knew what he was making. He told me what he was making, that he was gainfully employed. He had a substantial income in my opinion.

THE REFEREE: Did she have an income?

THE WITNESS: So far as I know, no.

THE REFEREE: Was she a woman of independent means?

THE WITNESS: I don't know, Your Honor.

THE REFEREE: Did you make inquiry as to what the purchases were for? Were you speaking of a particular one, Mr. Zitter?

MR. ZITTER: I think it was Bloomingdale's.

THE REFEREE: Did you ask him about the Bloomingdale's charges?

THE WITNESS: Not particularly, no.

THE REFEREE: But, it's your testimony that you asked Mr. Faye whether he thought he was responsible and since he said he had paid in the past you felt he should put it down?

THE WITNESS: No, I didn't ask him whether he was responsible. He told me he might be responsible. I said to him since he had paid these in the past he might be considered to be responsible.

Q Without inquiring what was purchased?

A That's right.

Q I take it the same situation prevailed with Altmans, you did not inqure what was purchased at Altmans?

A I did not specifically inquire.

Q I take it it's the same situation with Gimbels?

A That is correct.

Q Therefore, there was no discussion at all about the ten-carat diamond ring?

A You are talking about my meeting with Mr. Faye?

Q Yes.

A I told you subsequent to my meeting I had another meeting and at that meeting I suggested we talk with Mr. Leinwand.

Q At this first meeting with Mr. Faye, so far you have testified that you discussed three or possibly four of the credit cards without determining what was actually purchased at these department stores, correct?

A We just didn't limit our conversation to these three or four department stores. That was one of the things, correct.

Q What else was discussed?

A Other obligations, the list he had given.

Q Which particular obligations?

A I don't remember them offhand. They are all set forth in the schedules. He had furnished a list.

Q You have no recollection now what obligations were discussed?

A I don't know - - I don't understand your question.

Q I am trying to find out what transpired at that meeting. We already discussed four particular department store charge accounts. I would like to know what else was discussed?

A The expense of his assets, the expense of his liabilities, the reasons for going into bankrupcty. I didn't know Mr. Faye before this time.

THE REFEREE: Mr. Krause, please, do you remember your first interview with Mr. Faye?

THE WITNESS: In a general way, of course.

THE REFEREE: He came to your office?

THE WITNESS: That's right.

THE REFEREE: Did he furnish you with any papers?

THE WITNESS: Yes, he did.

THE REFEREE: What did he furnish you with?

THE WITNESS: He furnished me with some bills and a list of creditors.

THE REFEREE: Did he take them away with him when he left?

THE WITNESS: He may have.

THE REFEREE: Did he, do you know?

THE WITNESS: I don't think so because I would need them.

THE REFEREE: So, he left them with you, is that correct?

THE WITNESS: Yes.

THE REFEREE: Did you make any notes with respect to your interview with Mr. Faye?

THE WITNESS: At that time I don't recall. I don't think so.

THE REFEREE: Is the file here in court available? Can you look at it?

THE WITNESS: I have gone through the

file that I have.

THE REFEREE: Is there another file? Does your office keep separate files depending on whose working on the case?

THE WITNESS: I don't think so.

THE REFEREE: So, do you have the office file of your firm with respect to the bankruptcy of Nat Faye here in court?

THE WITNESS: I only have the file that was in my room. Here's a note in my handwriting (indicating).

THE REFEREE: Do you have with you the Leinwand, Maron, Hendler & Krause file with respect to the Nat Faye bankruptcy?

THE WITNESS: I don't know if this is the entire file. I have a file that has been in my room in my possession.

THE REFEREE: Will you tell me the manner in which your firm keeps their files with respect to individual bankrupts? Is there a standard practice?

THE WITNESS: I don't know that you could consider it a standard practice. I know if a matter is handed to me and I

accumulate papers that I am working on it's much more convénient that I do keep those in my room on shelves th I have in my room so th I can refer to them without going to Mr. Leinwand's room where there are file cabinets, and in the corridor.

THE REFEREE: Is there a central index system?

THE WITNESS: Yes.

THE REFEREE: Is each case assigned a file number?

THE WITNESS: Yes, sir.

THE REFEREE: Whatever you have in front you you, would that appear tc be a complete file kept in the normal course of your firm's record keeping?

THE WITNESS: I can't answer that question.

THE REFEREE: Is there a file number on whatever you have in front of you?

THE WITNESS: 2988, and I will give you the caption - - Harriet Faye and then it says, "Diner's Club" and then in the file I have found some papers that I had in my

possession which I apparently put in this file because I was reviewing it and it was in my room.

THE REFEREE: Can you tell us whether you are able to testify whether you kept any notes with respect to your first interview with Mr. Faye?

THE WITNESS: I did not.

THE REFEREE: Would the absence of such notes from your file indicate to you that no such notes were made or kept?

THE WITNESS: Not by me.

THE REFEREE: Then, would you tell us is it possible that anybody else made or kept any notes with respect to your first interview with Mr. Nat Faye?

THE WITNESS: Definitely not. I don't think anybody else was present at my first interview so nobody else would have kept any notes.

THE REFEREE: You have testified that most probably Mr. Nat Faye left with you the sheet of bills and the other information that you have testified to, correct?

THE WITNESS: I don't think I said "sheet". I said some bills.

THE REFEREE: All right, some bills?

THE WITNESS: Yes.

THE REFEREE: Now, can you tell us mechanically - -

Q Can we see the number of bills which he left with you?

A I don't know whether these are all (indicating).

THE REFEREE: Incidentally, you indicated that Mr. Faye is not going to testify any more in this proceeding, is that correct?

MR. LEINWAND: When did I indicate that?

THE REFEREE: When Mr. Zitter asked that further witnesses be excluded and you said only Mrs. Faye.

MR. LEINWAND: My only - -

THE REFEREE: Mr. Zitter, do you renew your application?

MR. ZITTER: Yes, I do.

THE REFEREE: Do you have any objection?

MR. LEINWAND: To his being out?

THE REFEREE: Please step out, Mr. Faye.

MR. LEINWAND: At the present time I don't think we need him. If something develops I may put Mr. Faye on.

THE REFEREE: Then we can exclude him non pro tunct.

MR. LEINWAND: I don't see what difference it makes at this time.

THE WITNESS: I am looking for something that I saw yesterday. If you will bear with me for a moment - - here are a whole sheet of bills which were given to me at the time of his meeting with me and they are, apparently, all Macys.

Q Are there any other bills which you have in your files?

A Well, I have a bill here addressed to Mrs. Faye by Macys. I have a statement addressed to Mr. Faye - - I don't know why it was given to me by the Fireman's Fund, American Insurance Company.

That is all I have here in my file, my particular file.

Q Well, is there any file which would indicate the bills upon which Schedule A-3 in the bankruptcy petition was made?

A I did not have all the bills represented by Schedule A-3, but I do remember seeing other bills which supported this list which he had given to us.

Q Who prepared Schedule A-3?

A I told you I did.

Q A secretary under your direction sat down and typed up the list starting with Aetna Insurance Company, Abercrombie & Fitch - -

A That's what must have happened.

THE REFEREE: Mr. Krause, do you remember these occasions or are you stating what might have happened?

THE WITNESS: No, I am.

THE REFEREE: Then, we have established at our first meeting with Mr. Faye he gave you some bills, you had some discussions as to whether he might be responsible for his wife's debts, you made no notes.

Did you report to anybody or speak to anybody about your interview with Mr. Faye?

THE WITNESS: First I said to Mr. Faye after we concluded our discussions I thought we ought to speak to Mr. Leinwand about it. I don't know whether this was the first or second meeting. We went into Mr. Leinwand's but he wasn't in the office.

I said, to him,"Why don't you come back; I will look at this list myself; I will need a little more time to do it." He then came back.

THE REFEREE: Did he tell you that was a complete list, the sheaf of bills?

THE WITNESS: No, I don't recall any such statement by him.

THE REFEREE: So then, he was dismissed with an appointment then made for a second visit?

THE WITNESS: No, I think I said to him, why don't you call me and I will tell you when Mr. Leinwand will be available so we can discuss it.

Q What was to be discussed?

A My recommendations that these other bills, these bills addressed to Mrs. Faye for her

purchases, be included in the schedules. I wanted to get Mr. Leinwand's opinion.

Q Has this matter ever come up before in any of the bankruptcy petitions that you ever filed?

A No, I don't believe so, not that I recall.

Q The issue has never come up in your experience?

A On occasion it comes up. I don't have a distinct recollection of having it come up, but I will say I would do the same thing again.

MR. ZITTER: Can we strike that?

MR. LEINWAND: You asked a question, he answered it.

THE REFEREE: It definitely should stay on the record.

MR. ZITTER: May I have one minute, please?

THE REFEREE: Let's take a five-minute recess.

(At this time a short recess was taken and all parties subsequently returned to the courtroom.)

MR. ZITTER: Your Honor, I have no further questions of Mr. Krause on cross-examination.

THE REFEREE: Mr. Krause, you told us about the first meeting with Mr. Faye.

Would you tell us about the second meeting?

MR. LEINWAND: That's what I was going to ask, Your Honor.

THE WITNESS: The second meeting was, in essence, a - -

THE REFEREE: When, a day later, a week later, two months later, when?

Did you call Mr. Faye and invite him in?

THE WITNESS: No. When I left our first meeting, I suggested to him that he come in again when Mr. Leinwand would be available, and my recollection, my best recollection - - I searched it as best I could - - is he came in certainly within a week and, again - -

THE REFEREE: Do you know what prompted him to return to your firm's office?

THE WITNESS: Yes, because I wanted him to discuss this with me and Mr. Leinwand.

THE REFEREE: Well, did he get a letter, a telephone call, or did he make constant inquiry to ascertain when Mr. Leinwand would be available? You indicated before at the end of the first meeting he left to return at some indefinite date when Mr. Leinwand would be available.

He did come back again, later, and I am inquiring of you what prompted him to return?

THE WITNESS: We did not leave it with an indefinite date. I meant to finish my answer by telling you and everyone here when he left we made an arrangement for him to come back. I don't know at this time whether it was four days later or a week later. It could have been less or more.

But, it was the understanding that we, "we" being me, Mr. Faye and Mr. Leinwand would meet on the second occasion.

THE REFEREE: In the interim, did you discuss the matter with Mr. Leinwand?

THE WITNESS: No, I did not.

THE REFEREE: You did not report to him that his client, Mr. Faye, had come in and been interviewed by you?

THE WITNESS: It sounds strange for me to say this, but I was never able to make contact with Mr. Leinwand about when I had made the apointment with Mr. Faye and he came in the second time and again, Mr. Leinwand was not available.

THE REFEREE: Tell us what happened at the second meeting; what did you say to Mr. Faye and what did he say to you? Did he furnish you with any information?

THE WITNESS: Additional information?

THE REFEREE: Did you make any inquiry about his assets? You indicated you got no information about assets at the first meeting?

THE WITNESS: I didn't say that.

THE REFEREE: What were the assets he set forth he had?

THE WITNESS: They are diminimus. They are set forth in the schedules in the

file.

THE REFEREE: A copy of the schedules have been marked for identification. They are not in evidence at this proceeding.

MR. LEINWAND: I will be glad to offer them.

THE WITNESS: I have no distinct recollection of what is set forth in these schedules.

THE REFEREE: Do you offer Bankrupt's Exhibit "B"?

MR. LEINWAND: Could we have the original schedule be deemed in evidence?

THE REFEREE: Yes, on the assumption that the bankrupt's exhibit, " Exhibit "B" for identification is an exact copy.

MR. LEINWAND: I am sure it is, Your Honor.

THE REFEREE: May I see Bankrupt's Exhibit "b" for identification? I don't want you to look at something that is not agreed to be an exact copy of something in evidence.

THE WITNESS: I wish you would look

at the first page. The caption looks as if it was not conformed in the original.

MR. LEINWAND: It was. That is my handwriting. I had tp put that in. I filed this myself and the clerk insisted that I add those words because of a rule of this district, relating to any partnership he may have been involved in in the last six years, even though it was out of business.

THE REFEREE: These are marked for identification with the original being deemed in evidence, it being represented that "B" for identification is the copy.

Is that agreeable, Mr. Zitter?

MR. ZITTER: Yes, it is, Your Honor.

THE REFEREE: Tell us what the discussion was at the second meeting. Mr. Leinwand was not present?

THE WITNESS: No, he was not.

THE REFEREE: What happened at the second meeting?

THE WITNESS: I went over these figures again, the bills.

THE REFEREE: What figures?

THE WITNESS: The list of creditors, Your Honor. I wanted to be assured that these were all of his creditors.

THE REFEREE: Did you prepare work-sheets?

THE WITNESS: No, I don't prepare worksheets. I call in the girl and dictate right from the information given to us from the client.

THE REFEREE: Are you telling us, then, that the stenographer in your office took down your dictation of the product which is shown by Bankrupt's Exhibit "B", sir?

THE WITNESS: I don't think it was on that occasion that we prepared the sched-ules, it was only after we talked to Mr. Leinwand.

THE REFEREE: We are back at the second meeting. Tell us what did happen at the second meeting; what did you say to Mr. Faye, what did Mr. Faye say to you; you just said "We discussed the assets"?

THE WITNESS: More of the same, the

listing of the creditors again, the department stores, and anything else for which he might be held liable.

THE REFEREE: Did you sit there and just talk names and figures to him?

THE WITNESS: I believe so.

THE REFEREE: Did you reduce it to writing?

THE WITNESS: No, I did not. There was no need to reduce it to writing.

THE REFEREE: What was the purpose of the second visit if it was not to get the information necessary for the schedules?

THE WITNESS: The purpose of the second meeting - - we already had a list, so far as I know. It was to discuss this problem of various creditors for which he might be liable. The serious thing - -

THE REFEREE: Are you telling us that the sheaf of bills that were given to you at the first meeting was the all-inclusive list of creditors?

THE WITNESS: No, I don't believe so, Your Honor.

THE REFEREE: Well, at the second meeting, did he then come back and say, "Look, these are my creditors"?

THE WITNESS: Your Honor, I believe the way it was done - - and I don't think this is from what I heard - - is that he came in and sat down with a girl in our office and dictated a list of creditors.

THE REFEREE: At the second meeting?

THE WITNESS: I don't know whether it was the first, the second or the third meeting, Your Honor. I just don't recall.

THE REFEREE: I think if you re-read your testimony, Mr. Krause, you will find that you testified very clearly, at least to me, there was no attempt to finalize a list of creditors at the first meeting.

THE WITNESS: That is correct.

THE REFEREE: Now, we are at the second meeting.

THE WITNESS: That's right.

THE REFEREE: You just said it could be at the first, second or third. It was not at the first meeting, but it could have

have been at the first meeting?

THE WITNESS: That's right, yes, Your Honor.

THE REFEREE: Mr. Zitter, do you want to take over?

THE WITNESS: May I finish my statement?

THE REFEREE: Please do.

THE WITNESS: I started to say on the second occasion, again, Mr. Leinwand at that time wasn't in the office, he was called out or he hadn't come in, or was out of town, despite the fact I had made the appointment with him and Mr. Faye, and I said to Mr. Faye, "I'm sorry, you will have to come back on another occasion."

THE REFEREE: Will you tell us how you made the appointment with Mr. Faye? You testified before you did not know how Mr. Faye was communicated with for the second meeting?

THE WITNESS: I told him to come back on a given date. There was no need to communicate. I told him - - if today is the

7th, I told him to come back here on the 14th.

THE REFEREE: You had ascertained Mr. Leinwand would be available?

THE WITNESS: That's the unfortunate part, I did not ascertain Mr. Leinwand would or would not be available. I assumed he would.

By the time I got around to telling him, he just wasn't able to be available. Again, I don't know whether I tried to let Mr. Faye off or he just came in. But, I do know he came in a second time and it was at the time we went over this again and repeated almost verbatim our discussion of the first meeting.

I said, "Nat, I am sorry, but you will have to come in again to see Mr. Leinwand and I will make sure he is here so you are not put to this trouble or bother."

THE REFEREE: It's my recollection you testified at the first meeting you did not make inquiry with respect to the wife's obligations, the nature of the wife's obliga-

tions? Am I correct in my recollection?

THE WITNESS: You see, all of these meetings sort of gelled into one. I can't pick apart the meeting definitely enough but I do know when he told me that this list included some of his wife's obligations, I must have said to him what are they, and he told me.

THE REFEREE: Do you or do you not know, Mr. Krause, whether you made inquiry of Mr. Faye with respect to the nature of his wife's obligations?

THE WITNESS: Yes. I knew they were department store obligations for the most part. He told me. He gave me some of the names.

THE REFEREE: Do you wish to continue, Mr. Zitter?

MR. ZITTER: Your Honor, I feel that the scope of my cross-examination has covered the scope of Mr. Krause's direct-examination.

I feel there has really been no evidence put in as to assets. The ten-carat

diamond ring was - -

THE REFEREE: You see, so far Mr. Krause never heard of the ten-carat diamond ring.

MR. LEINWAND: If Your Honor recalls, I tried to get into it and I was stopped.

THE REFEREE: No, Mr. Leinwand. Mr. Krause, I show you Schedule A-3 and ask you to see the creditor list at the top of Schedule A-3?

Will you look at the number, please, sir?

THE WITNESS: Sixteen thousand four hundred sixty-five dollars and two cents.

THE REFEREE: Do you now know what that obligation is for?

THE WITNESS: Yes, I do.

THE REFEREE: When did you first find out what that obligation was for?

THE WITNESS: I can't tell you precisely when.

THE REFEREE: Generally?

THE WITNESS: Prior to the time that the schedules were executed by Mr. Faye - -

no, not prior.

THE REFEREE: Is it your testimony, then, that Mr. Faye told you he owed Gimbels over sixteen thousand dollars and that you did not make inquiry what was the nature of the purchase underlying that obligation?

THE WITNESS: I have to give you a guess now or a - -

THE REFEREE: I don't want a guess, I want your testimony either yes or no, or you don't remember.

MR. LEINWAND: If you give him a chance, Your Honor, he might try to do it. I think he is being harassed.

I am not being given an opportunity to question him. I think I should be given that opportunity.

THE REFEREE: Just a minute. You have put your witness on on direct to disprove the commission of the objection set forth here.

MR. LEINWAND: Right.

THE REFEREE: The trustee finished his cross-examination. I am exercising my

right as the Court, to pick up the cross-examination as to which I feel the trustee has not completed.

This goes to the he t of the entire matter here.

MR. LEINWAND: He is trying to get to the third meeting where this all came out.

THE REFEREE: I don't want to get to the third meeting. Mr. Krause has just testified he did not find out the nature of the obligations to Gimbels prior to the time that the schedules were executed.

MR. LEINWAND: That's what I was trying to correct. I don't think he meant that, sir.

THE REFEREE: If not, you can take it up on re-direct.

This is cross-examination.

THE WITNESS: Your Honor, may I say this, I would like to clarify the entire matter. I don't even know what is in these specifications. I have never read them or even seen them.

I do know there has been a great deal

of talk about a diamond ring.

THE REFEREE: I am not interested in that. Mr. Krause, you haven't seen fit - - and I don't suggest this was any obligation on your part - - to examine what is the nature of these obligations.

I am just inquiring of you whether prior ro the time that the schedules were filed you ascertained what was the nature of the obligation underlying the debt to Gimbels.

THE WITNESS: That's right.

THE REFEREE: What is the answer, yes or no?

MR. LEINWAND: Give him a chance to answer, Your Honor. He is trying to say it.

THE REFEREE: Off the record.

(Discussion off the record.)

THE WITNESS: My best recollection is that at the third meeting with Mr. Faye and with Mr. Leinwand, when we finally did meet after two abortive or aborted meetings, for the first time I learned what this obligation was, this sixteen thousand dollars, because I recall very vividly saying to Mr. Faye,

"Your wife" - -

THE REFEREE. Please, you have answered the question. The answer is that you ascertained that the sixteen thousand dollar obligation was for the purchase of a ten-carat diamond ring, is that correct?

THE WITNESS: Not ten-carat. I didn't know what the carats were.

THE REFEREE: A diamond ring?

THE WITNESS: A diamond ring.

THE REFEREE: Well, are you now sure it was at the third meeting that this was disclosed?

THE WITNESS: It had to be because - -

THE REFEREE: Tell me why it could not have been at the second meeting?

THE WITNESS: Because I have no recollection of having discussed it at the first or second meetings with Mr. Faye.

THE REFEREE: We are still at the second meeting. Please tell us on what understanding you parted from the second meeting?

THE WITNESS: The second meeting was

Mr. Faye, or Nat - - I don't know how I addressed him - - I am going to make an appointment with you for either a week or four days hence - - I don't know what it was - - and I will make certain that Mr. Leinwand is present.

That's what happened, he came to the office.

THE REFEREE: Do you wish to pick up?

MR. ZITTER: I feel this matter is proper for direct-examination. If the bankrupt feels he does not want to bring out what transpired in preparing these schedules, I feel there has been no evidence presented to the point of the specification and I feel no obligation to bring out the facts on cross-examination.

MR. LEINWAND: May I then proceed, Your Honor?

THE REFEREE: Yes, please.

RE-DIRECT-EXAMINATION BY MR. LEINWAND:

Q Mr. Krause, do you recall the third meeting?

A Yes.

Q Was I present?

A Yes, you were.

Q Who else was present?

A Mr. Faye.

Q What did you say to me and what did I say to you and Mr. Faye?

A I said to you, "Mr. Faye had been to the office twice discussing the filing of this petition, the preparation of the schedules," and I think I repeated in telescope form what had transpired at the first two meetings and said it had been my recommendation to Mr. Faye to list in his schedules all of his wife's obligations and I said particularly department stores. And, for some reason I did not know until that afternoon, I think it was the afternoon, precisely what was involved in the obligations.

I was merely interested - - I shouldn't volunteer.

Q At that meeting did the question of a ten-carat diamond ring come up or a fifteen thousand dollar diamond?

A I don't know the carat. It was a diamond ring.

Q Do you recall my conversation with Mr. Faye - -

MR. ZITTER: Objection.

THE REFEREE: What is the ground?

MR. ZITTER: Hearsay.

THE REFEREE: Overruled.

A We all participated in the conversation.

THE REFEREE: What did who say to whom?

THE WITNESS: I said to Mr. Leinwand that - - and Mr. Faye - - I don't know in what order we said it or how we spoke, I just can't recall that just as it might have been - - a fur coat, or a car or something of that sort to most people is a luxury; a diamond ring in this case bought by Mrs. Faye might conceivably be a liability of Mr. Faye and - -

THE REFEREE: How did you know it was bought by Mrs. Faye?

THE WITNESS: He had told me that.

THE REFEREE: Please tell us what was said by whom to whom, if you remember.

THE WITNESS: Mr. Faye had told me there were many obligations in our first two conversations.

THE REFEREE: Let's stick to the sixteen thousand dollars to Gimbels.

MR. LEINWAND: First, Your Honor, I want to make clear that includes some additional things. The diamond ring was not sixteen thousand dollars.

THE REFEREE: I know it was not sixteen thousand dollars, it was fifteen thousand nine hundred dollars.

THE WITNESS: Are we back at the third conversation?

Q We are back at the third conversation.

A I think it was Mr. Leinwand or it might have been Mr. Faye.

THE REFEREE: If you don't remember, just say you don't remember.

THE WITNESS: I don't know whether it was Mr. Leinwand or Mr. Faye who said included in these obligations was a ring. I said, "What kind of a ring?" I think they said a diamond ring and I think somebody said a

very substantial price was paid for it, and I think I said - -

THE REFEREE: Are you thinking or are you telling us what you remember?

THE WITNESS: Your Honor, I just can't remember.

THE REFEREE: Mr. Krause, I have to give your testimony whatever weight it deserves.

Q Was there a discussion with me?

A Yes, there was.

Q What did I say?

A You said there was a diamond ring that had been purchased.

THE REFEREE: Just a minute, please, Mr. Krause. Had you discussed the first two meetings with Mr. Leinwand before the third meeting?

THE WITNESS: No.

THE REFEREE: Do you have any knowledge as to how Mr. Leinwand would have obtained the knowledge of the fact there was a diamond ring involved?

THE WITNESS: I can only assume that

Mr. Leinwand had discussed it with Mr. Faye, Your Honor.

THE REFEREE: Is it now your testimony that Mr. Leinwand brought up the diamond ring at the third meeting?

THE WITNESS: Either he or Mr. Faye.

THE REFEREE: What did Mr. Leinwand say when he said there was a diamond ring involved?

MR. ZITTER: I think it is unfair to have this witness testify as to what Mr. Leinwand's testimony was.

THE REFEREE: I think this entire thing is judging the state of mind of Mr. Faye. These are his witnesses testifying to exclude those items that you say should be a bar to his discharge.

I was listening with great attention. I felt it was my duty to bring out what happened. I have to be fair to the trustee and the bankrupt.

THE WITNESS: Shall I continue, Your Honor?

THE REFEREE: Please do so.

THE WITNESS: During the course of this meeting, the third meeting in which Mr. Leinwand, Mr. Faye and I had participated, I had mentioned to Mr. Leinwand I had met with Mr. Faye on two prior occasions - - on one I didn't know he was going to be in his office and one where I made an appointment and again he wasn't in the office - - and during the course of the discussions, I don't know who it was, somebody mentioned a diamond ring that I understood had been purchased by Mrs. Faye.

It now developes it was Gimbels Department Store and I don't know whether or not I was told it was Gimbels at that time or not. I said to Mr. Leinwand, I told him that I had told Mr. Faye to list all his creditors including some who may have been creditors because some of the purchases were made by his wife. I was informed there was a diamond ring and it was my opinion that the creditor from whom the diamond ring was purchased, whether by Mr. or Mrs. Faye, should be listed as a creditor.

I think I already gave you the reasons but if you want them again, I will do so, Your Honor.

Q Was there any discussion at that meeting about Mr. Faye's manner of living? Do you recall a discussion?

A I don't know whether it was at that meeting or the prior one where Mr. Faye had told me - in essense or substance, he had been, let's put it that way, a financially responsible citizen, that he had made substantial sums of money.

Q Were you told he had a yacht?

A Yes.

Q A sixty-eight foot yacht?

A I don't recall that.

Q Were you told he had a captain of that yacht?

A I can't say yes or no.

Q But, you remember the discussions that were had on the question of necessaries?

A Yes.

Q And, wasn't that brought up at the time?

A This wasn't for Mr. Faye, Mr. Leinwand.

Q I am talking about the discussion at the third meeting when we discussed the question of putting in Gimbels as a creditor even though it was Mrs. Faye's obligation?

THE REFEREE: He already testified he doesn't even remember whether it was Gimbels who had sold the ring, Mr. Leinwand.

THE WITNESS: Now that I look back, it had to be Gimbels. I didn't say I didn't remember it was Gimbels.

THE REFEREE: May I see Schedule B for identification?

Q Do you recall at that particular meeting that I brought up the Rosensteil case?

A Yes.

Q In discussing it?

A Yes.

Q Do you remember the discussion also at that time when I found out that the ring had been pawned?

A Yes.

Q Do you remember what I told Mr. Faye to do immediately?

A Yes.

Q What was it?

A Get in touch - - I don't recall precisely but something to the affect for Mr. Faye to get in touch with the people from whom he had pawned it.

Q And to get it back and give it back to Gimbels?

A Yes, that is correct.

Q You recall that?

A Yes, I do.

Q In connection with this discussion, what was decided as far as putting in or leaving out Gimbels and the others?

A You adopted my approach to the matter and you agreed with me and, obviously, Mr. Faye agreed, that all of the creditors would be listed whether they were direct creditors of Mr. Faye or possibly, what we might call indirect creditors by reason of the fact Mrs. Faye had made the purchases.

Q Thereafter, did Mr. Faye come up to another meeting?

A No, he came up at another time when he had to execute the schedules.

Q Was there a girl assigned to him so

he could give the list of creditors?

A This happened in my absence. He sat down with a girl and dictated this list.

Q He gave her all these creditors?

A Yes, sir.

Q The rest of the schedules, Exhibit "B", did you prepare the rest of the schedules outside of the list of creditors?

A Yes.

Q The list was prepared based upon what he gave us after instructions from us to include all of Mrs. Faye's department obligations?

A That is correct.

MR. LEINWAND: That is all, Your Honor.

THE REFEREE: You have testified that you now recall that at Mr. Leinwand's suggestion it was suggested that he, Mr. Faye, redeem it from the pawn shop into which he had put it?

MR. LEINWAND: Not that he had put it - -

THE REFEREE: That's what Mr. Krause testified to.

THE WITNESS: This is what I understood happened.

THE REFEREE: Will you tell us the conversation with respect to the ring? Was inquiry made with respect to the circumstances of the purchase of the ring?

THE WITNESS: By me?

THE REFEREE: Or Mr. Leinwand, or did Mr. Faye volunteer?

THE WITNESS: I didn't inquire. I don't recall whether Mr. Leinwand did.

MR. LEINWAND: I definitely did, Your Honor.

Since this is taking a turn, I may have to stop trying this and have to testify. I didn't want to do this because I felt I should try it. Under these circumstances, I may have to change my position.

RE-CROSS-EXAMINATION BY MR. ZITTER:

Q Mr. Krause, what did you learn at any of these three meetings about Mr. Faye, about any purchase of a diamond ring by his wife?

A Nothing.

Q Did you inquire?

A No.

Q Did Mr. Faye say anything at that time about that?

A Not that I recall.

Q Did Mr. Leinwand ever mention to you that Mr. Faye had mentioned it to him?

A Not that I recall.

Q What did Mr. Faye tell you about the circumstances surrounding the purchase of this particular diamond ring?

A I don't know that he told me anything. I think it was Mr. Leinwand who told me that the diamond ring had been purchased by Mrs. Faye and, again, the discussion concerned itself as to whether or not that obligation should be included in Mr. Faye's schedules, and since he had paid other bills incurred by Mrs. Faye, it led to the conclusion, at least on my part, this conceivably could be his obligation.

Q Did you know when this ring was purchased?

A I didn't even know about the ring until it was mentioned.

Q When it was mentioned, did you know

whenthe ring was purchased?

A I don't think that came up. I have no recollection of having anybody say when it was purchased.

Q You didn't know that the ring was purchased on June 21st, 1971?

A No.

Q Did you make any inquiry into when it was purchased?

A No.

Q You mentioned that you were aware that Mr. Faye had a rather high life style. Do you mean that - -

A I think the "high life style" are your words. I said that Mr. Leinwand had indicated to me he had made rather substantial sums of money over the years.

Mr. Leinwand had known him for some years prior to the time he filed his petition. I had met him possibly two or three weeks before he actually filed.

Q You were, obviously, aware thathis financial situation was not the same as it may have been in prior times?

A He didn't come to us because he was loaded down with money, he came to us because he was in financial trouble.

Q You were not aware of the fact this ring was purchased at a time when he was in financial trouble?

A I knew nothing about it. I tried to explain the first time I learned about the ring was the third meeting I had with Mr. Leinwand and Mr. Faye.

Q Did you make inquiry as to who purchased the ring or take it it was by Mr. Faye?

A I didn't make inquiry. This is what I was told.

Q Who told you?

A Either Mr. Leinwand or Mr. Faye. Mr. Faye had seen me before and told me he had substantial obligations and debts some of which were his wife's. I told you that at my very first meeting with him, I recommended they be included.

Q I am not talking about including the debts in the schedules, I am talking about who purchased the ring?

A I didn't know who purchased the ring.

Q At some time you learned about the ring?

A The third meeting.

Q At this meeting it was represented that the ring was purchased by Mrs. Faye?

A Yes.

Q Did you make any inquiry into that statement?

A I did not.

Q Do you know whether Mr. Leinwand made an inquiry into that statement?

A He may have. I didn't participate in the entire meeting.

Q During the course of that meeting there was no inquiry made into who purchased the ring?

A I just don't remember.

MR. LEINWAND: If Your Honor please, what difference does it make? All he was involved in was drawing schedules. He had come to a conclusion; he was told a ring was purchased.

MR. ZITTER: I would like to know who came to the conclusions?

THE REFEREE: I don't know what you mean he was engaged in drawing schedules?

MR. LEINWAND: Elliot Krause was there for the purpose of preparing the schedules in the bankruptcy matter. He is saying did he make an inquiry into who purchased the ring. In drawing schedules why does he have to make an inquiry?

MR. ZITTER: To find out whose asset it is.

MR. LEINWAND: Answer the question.

THE REFEREE: Mr. Leinwand, if that was his purpose I am at a loss to understand why the list of creditors wasn't dictated at the first or second meeting?

THE WITNESS: May I answer that, Your Honor?

THE REFEREE: Yes.

THE WITNESS: There was no reason at the first or second meetings to draw schedules if Mr. Leinwand was going to disagree with me as to the inclusion or exclusion of certain creditors and then this list would have a lot of x-marks on it or have to be

re-typed.

I didn't suggest to Mr. Faye he dictate these papers, which eventually he did, until we concluded our meeting with Mr. Leinwand. I saw no reason to rush in and prepare schedules because I didn't think or see any reason for filing - - there was no contemplated sale of assets; no marshal was knocking on his door; no creditor was examining him.

It was the kind of case that you look for where you are not under the gun and where the petition has to be filed the day before yesterday.

Q Was any inquiry made at the meeting as to who purchased the diamond ring?

A I made no such inquiry and I don't recall whether Mr. Leinwand did.

Q Did Mr. Faye volunteer any information?

A No, I don't recall whether or not he did.

Q Was there any discussion at this meeting as to who went up to Gimbels to purchase this ring?

A I didn't know anybody had gone to

Gimbels to purchase it nor did I hear any discussion along those lines.

Q In rendering your opinion to Mr. Faye that the sixteen thousand dollar debt to Gimbels should be included on the ground it might be considered to be a necessary did you take into account Mr. Faye's financial stuatus at the time?

A I took into account - - incidentally, I did not recommend just the inclusion of this one obligation in the schedules. My opinion was for all of the obligations and not the isolated transaction involving a ring.

I took into consideration what I understood to be Mr. Faye's ability to make money, his income in the past, the fact that he had paid these obligations in the past when other situations such as this occurred, and let me put it to you this way, I was trying to be - - and I think I have already testified to this - - ultra-conservative.

It didn't hurt, in my opinion, to list an obligation which possibly might actually not be an obligation of the bankrupt's. I wanted to be on the safe side because, as I said to him, "If you leave out an obligation which is yours and the

creditor has no knowledge you are not discharged of such an obligation, so you might as well list the obligation and give them notice of the proceeding."

Q Were you aware at any of these meetings, or made aware, that this ten-carat ring was purchased on one day and pawned the next?

A I knew nothing about that.

Q If I can recapitulate, you based your reason solely on the fact it was a department store obligation?

A I can shake my head no because it was not just a department store obligation, it was something that had been purchased by Mrs. Faye. I said to him, "Anything purchased by her which you might be held responsible for I would list in this list that your propose to get up for us," and that's the long and short of it.

Q Did you know that the money which was received from the Provident Loan Society was used in Mr. Faye's business to pay off his obligations?

A I knew nothing about that then and I don't know that I ever knew about it.

Q Did you ever see the sales slip for the purchase?

A No, sir.

Q Did you ever ask for the sales slip of the purchase or did anybody ask for the sales slip at that meeting?

A I don't think so.

Q Now, at any of these three meetings were the assets of Mr. Faye ever discussed?

A They weren't discussed at the first two meetings. I know that except perhaps in a general way. When it came time to actually prepare the schedules I have no doubt he was there and we went to Schedule B-1, B-2, B-3, B-4 and B-5.

I dictated the questions to a girl and she transcribed her notes.

Q Well, I would like to show you - -

THE REFEREE: You didn't dictate them to the girl?

THE WITNESS: Yes.

THE REFEREE: I thought Mr. Faye dictated them?

THE WITNESS: No, Mr. Faye dictated to the girl the list of A-3 creditors.

MR. LEINWAND: That's all that was said, the A-3 creditors.

THE REFEREE: He doesn't dictate the schedules.

Q I would like to show you Bankrupt's Exhibit "B" for identification, Schedule B-3, Section C?

A Yes, I see it.

Q Could you read what is contained there?

A Yes, I know it.

Q Was there any discussion of why Mr. Faye considered those pawn tickets to be assets of his estate?

A No, I don't recall any discussion.

Q Was that particular listing made based on something Mr. Faye told you?

A Certainly.

Q Mr. Faye told you these particular pawn tickets were his assets?

A That's what he must have said to me.

Q Do you recall him saying that?

A I can't recall a conversation that took place two years ago. I can only refresh my recollection by what appears in these schedules and only draw a conclusion that since they were prepared

by me he must have told me and I put them in my own words and he signed the schedules at some subsequent time.

Q You would conclude that Mr. Faye told you those pawn tickets were his assets, is that correct?

A Obviously. I didn't know this of my own knowledge.

THE REFEREE: Mr. Krause, can you explain, then, the rather unusual circumstance that you do remember the discussion about the Gimbels obligation but you don't recall the discussion about the pawn tickets?

THE WITNESS: I don't say I remember the discussion.

THE REFEREE: Do you remember the discussion on the question whether the Hammerman pawn ticket represents property that had been pawned that belonged to Mr. Faye?

A Precisely, Your Honor, all I can testify to is the fact that Mr. Faye gave me this information and I dictated it.

THE REFEREE: Do you now remember

discussing with Mr. Faye the rights of his estate in the pawn tickets, yes or no?

THE WITNESS: Yes.

THE REFEREE: Your testimony before was no, you can't remember something like this as of two years ago but he must have discussed it because you see it in the papers?

THE WITNESS: This is more - -

THE REFEREE: Which is it, do you remember discussing it with Mr. Faye or do you assume that you discussed it because it's in the schedules?

THE WITNESS: I assume I discussed it because it appears here in the schedule.

THE REFEREE: Then, you do not remember discussing with Mr. Faye those items?

THE WITNESS: That is correct.

Q Did Mr. Faye represent to you these were his assets, the pawn tickets?

A He didn't represent anything.

Q Did he state it? I don't want to argue over the word "represent".

A He told me what the facts were with

respect to these tickets and I put them in the schedules in the form which I believe they should have been put in there.

Q Did anybody raise the question that perhaps these jewels were his wife's property as opposed to his property?

A I don't know who you mean by "anybody?"

Q Anybody who was present at the meetings?

A These schedules were not discussed at any meetings, certainly not after Mr. Faye executed them. They were prepared, he was asked to read them over and sign them, and they were collated and filed.

Q I would assume the fact that Schedule B-3C was discussed at some meeting?

A Wait, when you say "a meeting," I think you are referring to a meeting other than the ones in which Mr. Faye told me what the facts were and I dictated them to a secretary.

Q You have testified as to three meetings which you had with Mr. Faye?

A Were these facts discussed at any of the three meetings?

Q Yes?

A No.

Q When were those facts discussed if they were discussed?

A They weren't discussed in the normal sense of a discussion taking place. Mr. Faye told me what the facts were and I dictated them to the stenographer.

Q This, I assume, was at a meeting?

A I won't call it a meeting.

Q At this time Mr. Faye was dictating what his assets were?

A He was telling me and I put them in the schedules.

Q Was anybody else present at that time?

A Nobody except the stenographer.

Q Did you raise the question whether or not the jewels were his assets or his wife's?

A I did not.

Q Did he place any question as to whose property that might be?

A I don't recall that he did.

Q To the best of your recollection he considered them to be his property?

MR. LEINWAND: I object to what he

considered, Your Honor.

A I don't know what he considered.

THE REFEREE: Sustained.

THE WITNESS: He gave me certain words.

MR. LEINWAND: The objection has been sustained.

MR. ZITTER: I have no further questions.

MR. LEINWAND: That's all.

H A R R I E T F A Y E, having been duly sworn by Honorable Edward J. Ryan, was examined and testified as follows:

THE REFEREE: Please give your full name and home address to the reporter.

THE WITNESS: Harriet Faye, Number 2 Fifth Avenue, New York City.

MR. ZITTER: Your Honor, could we have Mr. Faye leave the courtroom, please.

THE REFEREE: Yes.

DIRECT-EXAMINATION BY MR. LEINWAND:

Q Mrs. Faye, how long have you been

married to Mr. Faye?

A Twenty-four years.

Q How long have you had a charge account or charge accounts with Gimbels?

A Approximately nineteen years.

Q I show you these two charge accounts and ask if these are the two charge accounts that you have?

A Yes, they are.

MR. ZITTER: Can they be deemed marked?

MR. LEINWAND: These are included in the batch that were marked. Do you want them marked separately? These are two of the charge accounts, both for Gimbels.

Q Is one a thirty-day charge?

A Yes.

Q And, the other is an extended credit account?

A Yes.

Q You have had those for nineteen years?

A Yes.

Q In the course of those nineteen years

until 1971 were all of your bills at Gimbels paid?

A Yes.

Q Did you also have charge accounts with any other stores?

A Yes.

Q Can you list those stores?

A Bergdoff Goodman, Nieman-Marcus, Cartier's, Sax Fifth Avenue, B. Altmans, Abraham & Strauss, Bloomingdale's.

Q Were all of these in your own name?

A Yes.

Q To your knowledge, does your husband have any charge accounts in any of the stores in his name?

A No.

Q When the bills came in did he pay the bills?

A Yes.

Q When did you make your last purchase at Gimbels?

A June 21st, 1971.

Q What was the prior date to that? Was there a purchase or purchases made on June 19th by you?

A Yes, on June 19th I made some purchases in Gimbels.

Q Do you recall what those purchases were?

A Yes, I purchased a Panasonic fan and an electric cooker, a blue lapiz ring, a braclet and another ring.

Q You signed the sales slip?

A Yes.

Q Was the purchase made out in your name?

A Yes.

Q Did you get a bill in your name for those?

A Yes.

Q Did you return most of those items?

A Yes, I returned a ring and a braclet.

Q Was that the ring you just referred to, the lapiz ring?

A No, it was a green emerald and diamond ring and a braclet of some kind with a lot of stones in it.

Q Now, when you went there that day, on June 19th, was Mr. Faye with you?

A Yes.

Q When you went to Gimbels on June 21st, was Mr. Faye with you?

A No, he was not.

Q Were you in court the last time there was a hearing and did you hear Mr. Choilli (phonetics) testify?

A Yes, I did.

Q Did you hear him testify that Mr. Faye was there with you the second time?

A I heard him testify.

Q Was he telling the truth?

A He was mistaken.

Q You are sure Mr. Faye was not?

A Positive. I went back to return the braclet and the ring. That was the purpose of my going back on that date.

Q You also heard him testify the first time you were there with Mr. Faye he showed you a ring?

A No.

Q Did he show you the ring?

A No, sir.

Q Did you go back there to buy the ring?

A No, sir, I went back there to return the braclet and to return the green and white ring that I had taken.

Q And, you did return it?

A Yes, I did.

Q Did he then speak to you about buying this ring?

A Yes, I saw it, asked him the price, asked him about it. He told me it was a terrific buy and I took the ring.

Q Did you take it on memorandum or actually buy it?

A I bought it. I don't think there is a memorandum in Gimbels Department Stores at all.

Q As far as you were concerned it was an outright purchase?

A Yes.

Q I show you Trustee's Exhibit "1" in evidence, "1" and "2" which are the sales cards Trustee's Exhibit "3" is Gimbels credit record.

MR. ZITTER: Is that in evidence?

MR. LEINWAND: In evidence 12/18.

Q I show you this and ask you if that is the slip?

A Yes, and my signature.

Q Is there anything on that sales memorandum?

A No.

Q Were you told this was to be a memorandum sale?

A No.

Q Did you receive this when you took the ring?

A When I took the ring I asked him for an appraisal slip and a bill so that I could have the ring insured, and he told me he would put it in the mail and send it to me.

Q Did he do so?

A Yes, he did.

Q Did you receive it?

A I would say shortly afterwards.

Q Did you receive it at the same time you received the appraisal?

A Yes.

Q Well, I show you this and ask you is this the appraisal that you received from Marcus & Company?

A Yes.

MR. ZITTER: Could we have that marked?

MR. LEINWAND: Mark that as Bankrupt's Exhibit "C" in evidence.

THE REFEREE: Any objection?

MR. ZITTER: No, Your Honor.

(At this time the said document was so marked in evidence.)

Q Did he tell you that he was going to send you the sales slip and the appraisal at the same time?

A Yes.

Q And, the appraisal was dated July 7th, and then you received the sales slip?

A Yes.

Q But never any memorandum?

A No.

Q Now, did you tell your husband, Nat Faye, anything about the purchase of this ring?

A No, I did not.

Q On the 21st?

A No.

Q Or the 22nd?

A No, sir.

Q Since the purchase of that ring have you received statements from Gimbels?

A Yes, I have.

Q I show you the statements dated March of '72, February of '72 and April of '72. Are these statements addressed to you from Gimbels?

A Yes, they are.

Q To your knowledge did Mr. Faye ever receive any of these statements?

MR. ZITTER: Once again, can we have them marked?

MR. LEINWAND: We will mark them as one exhibit.

MR. ZITTER: No objection.

(At this time the said documents were so marked as Bankrupt's Exhibits "D-1" and "D-2" in evidence, "D-1" being the statement for March 1972 and "D-2" being the statement for April 1972.)

Q Now, when you were at Gimbels with your husband the first time did anyone come over to you and your husband and ask you to update your account?

A Yes.

Q Who was it?

A Mr. Choilli.

Q That's what he asked you to do?

A To update the account to make sure we were the party we said we were.

Q I show you Trustee's Exhibit "3" and ask you to look on the right side of this. What does it say?

A The number of my account.

Q What account?

A 01066174.

Q Is that the same number as it appears on your charge?

A 01066174.

Q This is what Mr. Faye gave them the information for and what he signed?

A Yes.

Q To update your account?

A Yes.

Q Did he ask for a charge account?

A No.

Q Did they ask him to sign a charge account?

A No.

Q What happened shortly after you

purchased this ring on June 21st? Did you receive a telephone call from Mr. Faye?

A Yes, a few days later he called me at home and said he was short in the bank, I should take some jewelry, whatever I had, and take a loan on some jewelry so he could meet what he was short in the bank that day.

So, I took the ring and I went into Provident and took a loan on the ring.

THE REFEREE: May I interrupt. Did you say several days after you got the ring?

THE WITNESS: Yes, sir.

THE REFEREE: When did you get the ring?

THE WITNESS: On the 21st.

THE REFEREE: And, he called you several days later?

THE WITNESS: Yes.

Q At that time did he know you had the ring?

A No, he did not.

Q Did he tell you to pawn this ring?

A No, sir.

Q What specifically did he say?

A "Get any jewelry that you have and get a loan on it for mé. I need it for today."

Q How much did he say he needed?

A He said he needed thirty-five hundred dollars.

Q Did he say he needed it for his business?

A Yes.

Q You got the loan?

A Yes.

Q Did he put it in his business?

A Yes, he did.

Q Now, have you made any other purchases from Gimbels in their jewelry department since the purchase of this ring?

A No.

Q Have you made any purchases of jewelry in the past, and I am not talking about doo-dads or trinkets, I am talking about expensive jewelry which you have not told your husband about when you bought it?

A I have.

Q Will you tell the Court some of those occasions?

A One was, a canary diamond ring from Nieman-Marcus. I think it was nineteen thousand dollars.

Q About when was this?

A I think 1970.

Q How long after you bought the ring did you tell Mr. Faye about it?

A About a month later.

Q What did he say to you?

A He told me to return it.

Q Did you return it?

A Yes, I did.

Q When else?

A I bought a braclet in Cartier's. I believe that was about - - I am not sure of the exact amount but about twenty-two thousand dollars.

Q How long after you bought it did you tell Mr. Faye about it?

A A month or six weeks after that.

Q What happened then?

A He told me to return it.

Q Did you return it?

A Yes.

Q What else?

A There was a ring that I bought from Hammerman Brothers. I am not quite sure of the amount.

Q I show you this and ask you - -

MR. ZITTER: May I see it so I know what we are referring to?

Q This statement is marked "returned." Who put that down, do you know?

A I have no idea.

Q It was returned?

A It was definitely returned.

Q Is this made out to Mrs. H. Faye?

A Yes.

MR. LEINWAND: Please mark this receipt from Hammerman Brothers, Inc., dated August 13th, 1970.

MR. ZITTER: No objection.

(At this time the said document was so marked in evidence.)

Q Did you return this to Hammerman?

A Yes, I did.

Q At the instance of your husband?

A Yes.

Q Were there any other occasions?

A There were other occasions when I brought home jewelry.

Q Do you like to shop?

A I love to.

Q Mrs. Faye, as a matter of fact, your husband has kept you in a very high style of living since your marriage, is that correct?

A Yes.

Q Is it a fact he maintained a boat?

A A yacht.

Q Did you have a captain?

A And a steward.

Q And entertained on it?

MR. ZITTER: Your Honor, there is no reason to lead the witness on this particular issue?

Q Would you state the scale of living to which you were accustomed?

A The scale of living was quite high.

Q Give us some details?

A Well, a steady maid, trips, beautiful things.

Q In addition to the boat, did you have Cadillac cars?

A Always.

Q You live on Fifth Avenue?

A Yes.

Q In a luxury apartment?

A Oh, yes.

Q Your husband entertains?

A Yes.

Q Buyers?

A Yes.

Q Does his type of business require it?

A Yes.

Q As a matter of fact, can you give us an idea what he spends in entertainment?

A I couldn't give an exact amount but in big numbers.

Q Over the years were there times of feast and times of famine?

A Yes.

Q But, in all of these time did he come out of it?

A Always came out of it and always paid my bills.

Q And always paid his own bills?

A Always.

Q At the time you purchased these diamonds did you feel they could be paid for?

A Absolutely.

Q In 1971 when this was done was there ever an instance when the diamonds weren't returned or paid for?

A Would you repeat the question?

Q Until this incidence of June 1971 was there ever a time when any of the expensive diamonds you bought were either not paid for or returned?

A They were either returned or paid for.

MR. ZITTER: Your Honor, I don't think we had an instance of a particular expensive diamond being purchased.

THE REFEREE: Sustained.

MR. LEINWAND: I said, "returned or paid for."

THE REFEREE: His objection is there is no evidence anywhere of paid for, Mr. Leinwand.

Q Mrs. Faye, the diamonds which were

purchased - - you had diamonds that were pawned, did you not?

A Yes.

Q Outside of this ring were they all paid for?

A All paid for.

Q Was there any diamond purchased that wasn't paid for?

A No, everything was paid for.

Q Your engagement ring?

A Was paid for.

Q Do you remember how much that was?

A That was sixty-five hundred dollars.

Q What other expensive diamonds did you have paid for?

A A diamond necklace, a diamond and emerald brooch, diamond earrings, a diamond watch. Many other items.

Q A diamond braclet?

A Yes.

Q From time to time they were pawned?

A Yes.

Q They were all paid for?

A Yes.

MR. LEINWAND: May I renew the question?

MR. ZITTER: There is no evidence how much they were.

MR. LEINWAND: She said sixty-five hundred dollars.

Q Were there any others included in that list you gave us of sixty-five hundred dollars or more?

A I don't recall the amount of the pin but it was quite expensive.

Q Approximately? What do you call expensive?

A I am not sure. It might have been more than the ring or the same.

Q Around the area of sixty-five hundred dollars?

A Or ten thousand dollars.

MR. LEINWAND: Do you renew your same objection?

THE REFEREE: Why renew it? The lady has answered it. Off the record.

(Discussion off the record.)

Q Now, I show you bills from the

Provident Loan Society and ask if those are reminders for you for diamonds and jewels that have been pledged with them?

A Yes.

Q Were these made out to Mrs. Harriet Faye?

A Yes.

MR. LEINWAND: I offer these.

MR. ZITTER: No objection.

(At this time the said documents were so marked as Bankrupt's Exhibits "F-1" and "F-2" in evidence.)

Q Will you explain why you would purchase these diamonds without letting your husband know?

A Well, I would purchase them and wait for the right time when I felt he was in a good mood. Then I would show them to him and sometimes he would say keep the thing that you have purchased and sometimes he would say give it back.

So, I waited for the timing when I felt it was the right time.

Q Were you present when Mr. Faye spoke to Gimbels about getting back this ring in question

and returning it to them?

A Yes.

Q Do you recall the conversation?

A Somewhat I do. He asked them if they wanted to take the ring back because he was going into bankruptcy, and they said that they would take it back and sell it and give him a certain amount - - I am not sure.

Q Give him credit for what was received and hold him for the balance?

A Exactly.

THE REFEREE: Do you know to whom he spoke?

THE WITNESS: I think it was a Mr. Green. I am not sure of his name.

MR. LEINWAND: That's all.

CROSS-EXAMINATION BY MR. ZITTER:

Q Mrs. Faye, you testified, I believe, to three particular instances when you purchased particularly large items of jewelry and brought it to your husband's attention and then they were returned?

A Yes.

Q First you mentioned, I think, a

canary diamond ring from Nieman- Marcus?

A Yes.

Q Can you tell us in time when this purchase took place?

A I believe the winter of 1970.

Q Could you refresh my recollection as to the purchase price?

A I am not quite sure. I think it was about nineteen thousand dollars.

Q You brought the ring home with you and kept it at home?

A Yes, I did.

Q For approximately how long before you mentioned it to your husband?

A About three or four weeks.

Q Then you mentioned it to him?

A Yes.

Q What did he say?

A He blew his stack and said, "Bring it back."

Q Why?

A He said, " I don't want to spend that much money for a ring right now."

Q Was there ever a time when he had

spent that much money for that ring?

A Yes. As I got older lots more.

Q It was your answer his mentioning to you to return the ring was it was too expensive?

A He said it was too much money at that time.

Q Was there a reason why it was too much money at that time?

A That's what he told me.

Q To your recollection was he in financial difficulty at that time?

A No, sir.

Q You never mentioned prior to purchasing this ring that you intended to; you never mentioned to Mr. Faye before you went to Nieman-Marcus you intended to purchase a ring?

A No, sir.

Q You also mentioned a braclet in Cartier's. Can you tell us approximately in time when this purchase took place?

A Yes, this was November, I believe, of 1970.

Q So, that's after the Nieman-Marcus purchase?

A Yes.

Q What was the purchase price of that?

A I am not sure. It was about twenty-five thousand dollars but I am not sure.

Q When you brought this braclet to Mr. Faye's attention what was his reaction?

A He said, "Bring it back, I don't want to spend that much money for a braclet, it's old-fashioned looking."

Q You understood his primary reason for asking you to return it was it was too expensive?

A He always complained about expenses. For twenty-four years he complained about expenses to me. It's a husbandly way to explain.

Q He didn't make you take everything back that you bought over twenty-four years?

A No, sir.

Q Why did you think he made you take this back?

A He didn't like it, he didn't think it was worth the money and didn't like it.

Q It had nothing to do with his ability or desire to spend twenty-two thousand dollars at that time?

A No.

Q Let's get to the ring from Hammerman Brothers. Approximately when was the ring purchased?

MR. LEINWAND: You have the date on the bill. The bill is dated August 13th, 1970.

A That's it.

MR. ZITTER: What was the purchase price?

MR. LEINWAND: Twenty-two thousand dollars.

Q I believe you previously testified that it was returned at the insistence of Mr. Faye?

A Yes.

Q Again, what was his reaction when you brought it to his attention?

A To return it, "I don't like it, I don't want it."

Q It was based on aesthetic grounds or expense grounds?

A No, aesthetic grounds.

Q He had no objection to spending twenty-two thousand dollars except he didn't think the particular ring was worth it?

A Right.

Q Was there ever a time when Mr. Faye did not tell you to take back a piece of jewelry in the price range of approximately twenty thousand dollars?

A I have a lot of jewelry and a lot of things.

Q Did you have any particular items of jewelry which cost twenty thousand dollars?

A No, I don't think so.

Q So, there was never a time when Mr. Faye did not ask you to take back an item of jewelry which costs approximately twenty thousand dollars?

A I don't understand the question.

THE REFEREE: Would you state the approximate value of the most expensive piece of jewelry that you purchased that Mr. Faye permitted you to keep?

THE WITNESS: I would say ten thousand dollars.

Q What particular item of jewelry is that?

A I believe that's a pin.

Q When was that purchased?

A Maybe ten years ago.

Q Are there any other particular items of jewelry in approximately the ten thousand dollar price range which you have or had in the course of your marriage?

A I don't remember exactly what the necklace cost.

Q Approximately?

A I really don't remember.

Q When was this necklace that you are referring to purchased?

A The necklace was purchased about the same time when I bought the pin.

Q That's about ten years ago?

A I would say.

Q From approximately the period January 1st, 1970 through the date of the bankruptcy petition, which was September 1971, was there any expensive piece of jewelry, expensive jewelry, that you purchased?

A No expensive.

Q I am talking in the category of ten thousand dollars or more?

A No, but I would buy things for a

few thousand dollars, earrings or doo-dads.

Q Nothing in the ten thousand dollar price range that we were discussing?

A No.

Q Now, other than the three situations that you have previously testified to, were there other instances of you making large purchases of any items which you did not first tell Mr. Faye about?

A Yes, I did. I bought a dress for nine hundred dollars and I told him the price after I wore the dress. He told me I looked lovely and - -

Q Can you recall any other instances?

A There might have been thousands of them.

Q Of items costing approximately one thousand dollars?

A Right.

Q Now, did there come a time - - let's limit it to the period of January 1st, 1970 through the date of the bankruptcy petition - - when you pledged some of your jewelry?

A Yes.

Q Do you recall within that period when

the first pledge took place?

A In that period?

Q Yes.

A It could have been late in 1970. I am not certain.

Q The latter part of 1970?

A Yes, or early in '71. I'm not sure.

Q Do you recall what particular items of jewelry were pledged?

A Yes, it was earrings and a ring and a gold handbag.

Q Do you recall approximately how much you received for those? That is in terms of the loan from the pawn shop?

A No, I really don't recall exactly.

Q Why did you pawn these particular items of jewelry?

A My husband would call me at times - - this is going back twenty years - -

Q I would like to limit myself to the period January 1970 through September 1971?

A And say that he needed this money in his business. He was in commodities. And, I would pawn my jewelry and give him the money and he

would always give me the money back to take the jewelry out.

Q Were you aware of any particular financial difficulties at the time you made the pledge?

A No.

Q Do you recall for a fact you did redeem the pledge you just referred to?

A Do I recall?

Q If in fact you did pay the amount you owed to the pawn shop and take the jewelry back?

A No.

MR. LEINWAND: Are you talking about the previous one?

MR. ZITTER: The particular pledge she is talking about.

A You said 1971.

Q You said 1970 or the beginning of '71 was the period in the period I specified?

A Yes.

Q That is still in pledge?

A Yes.

Q That has not been redeemed?

A No.

Q Do you recall the next pledge? You said you made one around January 1971.

Do you recall the next time if, in fact, you ever did make a pledge?

A This one was the next pledge.

Q In other words, between January 1971 and June [illegible], 1971 there were no pledges made of your jewelry to your recollection?

A There were no pledges made.

Q You did not make any pledges of your jewelry? Am I misleading you?

A Yes, you are.

Q Let's get back to the first pledge, the one around January 1971. You did it strictly at your husband's request, is that true?

A Yes.

Q After this pledge in January 1971 did there come another time when you had to pledge jewelry?

A Yes.

Q When was that?

A That was in - - well, sometime late in June of '71 or the beginning of July.

Q Are you now referring to the pledge

of the ten-carat diamond ring which is the issue here?

A Yes.

Q To the best of your recollection there were no pledges made between January 1971 and the pledge of the ten-carat diamond ring?

A No, except for the ones that I told you about.

THE REFEREE: Off the record.

(Discussion off the record.)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

NAT FAYE, individually, formerly a member of a partnership with MEYER FITCHEK and PAUL SALLECK d/b/a EMENESS TRADING and with LAWRENCE KARES d/b/a C & F DISTRIBUTING COMPANY,

Bankrupt.

No. 71 B 903

United States Court House
Foley Square, New York, N.Y.

November 5, 1973
2:15 p.m.

Before:

HON. EDWARD J. RYAN

Referee

ADJOURNED HEARING ON SPECIFICATIONS OF OBJECTIONS TO DISCHARGE

Appearances:

GERALD I. METZ, C. S. R.
Official Court Reporter
Room 230, United States Court House
Foley Square, New York, N.Y. 10007
~~COrtlandt 7-3137~~

APPEARANCES:

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ALSO PRESENT:

WILLIAM FABRIZIO, Esq.

* * *

THE REFEREE: We are now approaching the final session, I trust.

MR. LEINWAND: As I recall it, I think the only thing was Mrs. Faye was being examined and there was some question of some jewelry at Provident.

MR. ZITTER: I believe I was just in the middle of cross-examination of Mrs. Faye.

MR. LEINWAND: Do you want to take the stand.

THE REFEREE: If you will, Mrs. Faye.

H A R R I E T F A Y E , having been previously sworn, was recalled and testified further as

follows:

THE REFEREE: I remind you are still under oath.

Would you be seated please, and would you give the reporter your full name, your residence address.

THE WITNESS: Harriet Faye, No. 2 Fifth Avenue, New York City.

CROSS EXAMINATION

BY MR. ZITTER:

Q I beg your indulgence if I just back up over a few questions which I went over last time, simply for the sake of continuity.

I believe you were testifying about several prior purchases of large items of jewelry which you originally purchased and then returned and never actually kept them. Could you tell me again on how many prior instances, this took place?

A Well, there were numerous instances.

Q I think we narrowed it down to your three and four instances, if my recollection serves me; is that correct?

A Yes, that's correct.

Q Could you identify the items of jewelry

that were involved and the particular times when they were purchased and then returned?

A. There was a ring at Neiman-Marcus.

Q. What was the purchase price on that again, if you recall?

A. I think it was about $12,000.00. I just don't recall the exact amount, but it was in that area.

Q. Yes?

A. Then there was a bracelet at Cartier's. That was $16,000.00, $18,000.00. I really don't recall the exact amount.

Then there was a ring at Hammerman's. I believe that was about $19,000.00 or $20,000.00. That was returned. I don't remember the amounts. They were expensive pieces, you see.

Q. I am just asking for your recollection.

A. Then I think there was another ring in Cartier's some years ago also that I returned. That was about $25,000.00, $26,000.00.

Q. Are those the instances that you can now recall?

A. That I can recall right now.

Q. Do you recall that there were other instances? Just you cannot recall the specifics?

A. Not as expensive items. Are you talking about little --

Q. I am talking about items approximately $15,000.00.

A. No. I think these were the --

Q. The ring which you purchased at Neiman-Marcus and then returned, do you recall approximately when that transaction took place?

A. I think that might have been in 1969.

Q. Do you recall why you returned that ring?

A. Mr. Faye told me to return it.

Q. Do you know why he told you to return it?

A. He said I didn't need it and I should bring it back. He didn't like it and I should give it back.

Q. Did he mention that it was too expensive?

A. He mentioned everything that I bought was too expensive. If I spent $20.00, he said, "You don't need it" and it was too expensive.

Q. You do recall him specifically saying in regard to this ring at Neiman-Marcus that it was too expensive?

A. I don't remember him specifically saying that, but I returned it.

Q. Did you feel that one of the reasons he

told you to return it was because it was too expensive?

MR. LEINWAND: I must object to whether she felt one of the reasons he thought is completely speculative and a conclusion.

THE REFEREE: Overruled.

Q You can answer the question.

A Would you please repeat the question.

Q Was it your feeling that Mr. Faye felt that it was too expensive?

A No, because he had been telling me that things were too expensive for 24 years, so I just thought this is the way.

Q I believe we had established last time that the most expensive piece of jewelry which you owned cost approximately ten to twelve thousand dollars; is that correct? That's just my recollection.

A Yes.

Q The bracelet which you bought at Cartier's, approximately when did that transaction take place?

A That was, I think, about five years ago.

Q That would be also about 1969?

A Five years ago.

Q In '68?

A Yes, something like that.

Q The purchase price on that item?

A I told you before. It was quite expensive.

Q Again was this returned at the request of Mr. Faye?

A. Yes.

THE REFEREE: Does it help you if we remind you that you said it was around $25,000.00?

THE WITNESS: Yes. It was quite expensive. Thank you.

Q Did Mr. Faye mention the expense of the item when he told you to return this?

A He told me to return it, I didn't need it and I should give it back.

Q The ring at Hammerman Brothers, when was that purchased?

A About three years ago.

Q That's about 1970, some time in 1970?

A Yes.

Q Did Mr. Faye ask you to return this item, too?

A Yes.

Q Again did he mention any reasons why he wanted you to return it?

A He said he didn't like the ring, he didn't care for it, he didn't think it was worth the money at that time,

and that I should return it.

Q And the ring which you purchased at Cartier's, approximately when did that transaction take place?

A About maybe six years ago, five or six years ago.

Q 1967, 1968?

A What I recall.

Q Again was this returned at the request of Mr. Faye?

A Yes.

Q Do you recall what he told you when --

A To bring it back.

Q Were any reasons given?

A The same things, that "you don't need it and give it back".

Q During the period from January 1, 1971, through the filing of the bankruptcy petition, which, just to refresh your recollection, was, I think, September 15, 1971, were you aware of Mr. Faye's financial difficulties?

A No, I was not.

Q You had no idea that Mr. Faye was --

A I had no idea. I continued living in the same way I had always been living. So I knew nothing.

Q Did Mr. Faye ever tell you that he was

experiencing financial difficulties?

A He never told me much about his business.

Q So your testimony is then that you had no idea about any of Mr. Faye's financial difficulties from the period January 1, '71, through the bankruptcy petition?

A No, sir.

MR. ZITTER: May I have this marked, please, for identification.

THE REFEREE: My notes indicate that when Mr. Faye testified, he was presented with some documents pertaining to the joint checking account and it was then testified that of $114,000.00 in deposits in Exhibit 4, some $112,000.00 came through corporations.

MR. ZITTER: I stand corrected. I believe that we are up to No. 5.

(Letter dated April 29th, 1972, on the stationery of Provident Loan Society marked Trustee's Exhibit 5 for identification.)

MR. ZITTER: I believe Mr. Leinwand has stipulated to the accuracy of the transactions which this letter reflects.

MR. LEINWAND: Yes.

MR. ZITTER: I would like to have it marked in evidence.

MR. LEINWAND: I assume you are going to go into that.

MR. ZITTER: Yes.

THE REFEREE: Any objection?

MR. LEINWAND: No objection.

(Trustee's Exhibit 5 for identification was now received in evidence.)

Q I would like to show you Trustee's Exhibit 5. Please review the document just so that you are familiar with it.

A I read this, yes.

Q I would like to draw your attention to the bottom paragraph on the first page where it says the collateral for loan number 25658 was pledged on March 2nd, 1971. Now, if you refer to the chart where it says loan 25658, diamond ring, two diamond ear clips, two diamond pins, diamond necklace, diamond watch bracelet, did you pledge those items at Provident Loan Society on March 2nd, 1971?

A Yes, I did.

Q Why did you take the items to the Provident Loan Society on that date?

A Because my husband called me and he said he needed some money in the business and to take the jewelry in and -- some jewelry in and see how much money I could raise to give it to him.

Q Had he ever done this before?

A Yes, many times during my marriage.

Q On numerous occasions?

A Yes, and I always took the stuff out afterward.

MR. ZITTER: I move to strike that.

MR. LEINWAND: Let her finish her answer.

THE REFEREE: Mr. Leinwand, please.

MR. ZITTER: I believe she answered the question.

Q When was the time before --

A This is not an uncommon thing for me to do.

THE REFEREE: You have already so testified, Mrs. Faye, at some great length. In fact, you have testified clearly that the day after you bought this, you hocked it when Mr. Faye called up and said "I need $3500.00."

MR. LEINWAND: This is not the same one.

THE REFEREE: I know it is not the same one.

MR. LEINWAND: You said the day after you bought this. This is not the same one.

THE REFEREE: "This" meaning the ten carat ring that's the subject matter of the specifications of objection.

MR. LEINWAND: I see, all right.

THE REFEREE: All right.

Q Did Mr. Faye mention anything about his financial difficulties at the time he asked you to take this jewelry in?

A No. He just said he needed it and to do it and, so, I did it and he said he would get it out for me.

Q Did you discuss with Mr. Faye particular items of jewelry which you were going to pledge?

A No, I didn't.

Q How did you select those particular items?

A I don't know how I selected them. I just went to my jewelry box and I took them out and I took them in.

Q Well, did Mr. Faye give you a specific amount of cash which he needed?

A At that time? I really don't recall.

Q Do you recall any conversation with Mr. Faye about pledging these items other than the fact that he told you to do that?

A Any other conversations in regard --

Q About pledging these particular items?

A That I should put it in and that he would get it out.

Q Do you recall where this conversation took place with Mr. Faye?

A At home.

Q Were both of you physically present at home at the time?

A Yes.

Q Did it take place in the morning before he went to work or in the evening when he returned?

A I don't remember. I don't remember honestly.

Q So it's your testimony then that Mr. Faye said "please pledge some of your jewelry" or words to that effect?

A Yes, "I need some money."

Q And you went and did it?

A Yes.

Q Then you took the money and gave it to Mr. Faye?

A Yes.

Q To the best of your knowledge, he used it in the business?

A Oh, yes.

Q I would like to direct your attention to Trustee's Exhibit 5, the chart at the top of the page,

where it says loan number 81348 date June 16, 1971, amount $1,000.00, collateral diamond mounted gold evening bag, diamond pendant and stone necklace. Do you recall going to the Provident Loan Society to pledge those particular items?

A Yes.

Q On June 16, 1971?

A Yes.

Q Why did you go to the Provident Loan Society at that time?

A Because my husband called me and he said he needed some money in the business and to loan some money on some jewelry.

Q Once again, was there any specific discussion about the particular items of jewelry which you should pledge?

A No.

Q Was there a discussion about the particular amount which he needed in his business?

A I think he said he needed about $1,000.00, something like that.

Q Was it your opinion that these particular items were what was necessary to support a loan of $1,000.00?

A That's correct.

Q Did you take this money then and give it to Mr. Faye?

A Yes.

Q Did he, to the best of your knowledge, use the proceeds in his business?

A Yes.

Q As I understand the sequence here, on June 16, 1971, you went into the Provident Loan Society for a loan against your jewelry in the amount of $1000.00?

A Yes.

Q Then was it subsequent to June 16, 1971, that you made your first trip to Macy's to purchase particular items of jewelry?

A You mean Gimbel's?

Q Gimbel's. I am sorry.

Was it prior to June 16, 1971, or subsequent to June 16, 1971?

A You mean afterward did I buy the ring at Gimbel's, after?

Q I believe your previous testimony is that you were at Gimbel's during the month of June, 1971. Now, I want to know if the first trip to Gimbel's was before June 16 or after June 16?

A After.

Q The first trip is after June 16?

A Yes.

Q I believe that you testified that the first trip was for you to buy a particular lapis piece, a small item of jewelry?

A No. We didn't go there specifically to shop for jewelry. I went there to shop for a Panasonic fan and an electric broiler, which was on the same floor.

MR. LEINWAND: L-a-p-i-s, I believe it is.

THE WITNESS: L-a-p-i-s.

Q This was a trip which you testified you went with Mr. Faye?

A Yes.

Q Then somehow you went over to the jewelry department?

A I always somehow got over to a jewelry department.

Q Did either you or Mr. Faye mention the fact that on June 16, 1971, just a few days prior to your trip to Gimbel's, that you would pledge a substantial amount of jewelry?

A No.

MR. LEINWAND: I object to "substantial amount". A thousand dollars is not a substantial

amount.

MR. ZITTER: The loan is not a substantial loan, but the jewelry, I believe, is a substantial amount of jewelry. I will strike that word.

MR. LEINWAND: Then I withdraw my objection.

A No, Mr. Zitter, because --

THE REFEREE: Please. The objection has been withdrawn. The question has been withdrawn and your partial answer is now to be withdrawn.

T 2

Q On this trip to Gimbel's, the first trip to Gimbel's in June, 1971, did either you or Mr. Faye bring up the fact that just a few days previous to this trip you had pledged the particular items of jewelry which you did pledge at Provident Loan on June 16?

A No. I didn't think about it, Mr. Zitter because to me it didn't mean anything, because he would get it out for me very shortly and it has no meaning. So I put it in a vault in the bank.

Q Did Mr. Faye bring up anything about the pledging of the jewelry?

A No. I didn't buy anything of any substantial worth that day.

Q I don't recall what the ultimate disposition of the lapis piece was. Did you keep it?

A. I had bought -- I had taken home a lapis ring and a bracelet of some kind and a gold bracelet and another ring, and the lapis ring was a final sale, and I kept them over the weekend and I couldn't have returned the lapis ring anyway. But I brought back the other pieces. I decided I didn't care for them.

Q. But you did keep the lapis piece?

A. Yes. But that was the least expensive, I think, of the lot. It was just a few hundred dollars, I believe.

Q. I believe the purchase of the ten carat diamond ring which is the issue here took place on June 21?

A. On a Monday.

Q. On a Monday?

A. Yes.

Q. I don't know the date.

When you went to purchase that ring --

A. I didn't go to purchase it. I went to return the other pieces that I had taken on Saturday.

Q. When you were there and you began to look at the particular ten carat diamond ring that's in issue here, were you at all concerned that some of your jewelry had been pledged to help Mr. Faye with his business?

A. No. To me it was just as though I was putting it in a vault. I have no fear of anything.

Q In other words, you are saying that despite the fact that you pledged jewelry just a week before, it didn't strike you as strange to --

A No, because I had pledged jewlery over the years many times. Everything was always returned to me.

Q Did you pledge the lapis piece when Mr. Faye asked you to pledge all you had, if I remember that testimony?

A No, because the ring was worth very little. I think the purchase price was just a few hundred dollars.

Q I believe, if I recall Mr. Faye's testimony correctly, he said that he asked you to pledge all you had.

A Well, to me, if it is of substantial value, I can't pledge something and get $25.00 for it. I don't think that would have helped him.

THE REFEREE: Is there testimony that Mrs. Faye said that Mr. Faye said that she was to pledge all she had?

MR. ZITTER: My question was that Mr. Faye said he called his wife and said "pledge everything you have got." That's my recollection.

THE REFEREE: My notes indicate that Mrs. Faye testified that she got the ring on

June 21; several days later Mr. Faye called and said he needed $3500.00 for business; she should pawn some jewelry.

MR. ZITTER: That's not my recollection.

MR. LEINWAND: I think I have the minutes here.

THE REFEREE: If there are minutes available, I suggest we do it in a conventional manner.

MR. LEINWAND: We have that. May I be given a few minutes to check it?

THE REFEREE: Yes.

This was shortly after bankrupt's exhibit D was received in evidence. Maybe that will help you locate it.

MR. ZITTER: Page 42, I believe, your Honor.

MR. LEINWAND: "My wife had purchased the ring. During that period I called her up to my office. I told my wife to put anything she has. I need some money immediately because the bank is calling me for a shortage of money. I said whatever you got, put it in.

"THE REFEREE: When was that? That was on that date, the date of the loan, June 21, or

June 22nd?

"THE WITNESS: June 22nd.

"Anything you got."

Then, later on, if I may, please --

THE REFEREE: Not yet. There is an orderly way of doing it.

Q You just heard Mr. Leinwand read what Mr.Faye has testified to. Do you recall him saying that on the phone?

A I think he said that.

Q Is there any reason why you didn't pledge the lapis piece to which you assume you had at that time?

A The lapis ring? Because I didn't think it's of any value.

Q Well, did Mr. Faye tell you how much money he needed?

A Yes, at that time, he did. I think he said he needed about $3500.00.

Q If I may just read to perhaps refresh your recollection, on page 44 of Mr. Faye's cross-examination, he said, "All right, whatever you have in jewelry, please put it in. I need some money now."

Do you recall Mr. Faye saying words to that effect?

A. No, I don't.

Q. Well, did you have any other jewelry besides the ten carat diamond ring?

A. Mr. Zitter, I was a widow when I married Mr. Faye. My husband was killed in World War II. I had some jewelry from my previous marriage. So everything that I had is not only from Mr. Faye.

Q. Well, did you have any other jewelry from Mr. Faye which you had on June 22nd when you got that call from Mr. Faye?

A. Not of that value.

Q. Well, of what value were these items?

A. Which one -- I don't understand.

Q. You tell me which particular items you had when you received the phone call from Mr. Faye?

A. Of any substantial amount was that ring, that diamond ring.

Q. I am not asking of any substantial amount. I would like to know what particular items of jewelry you had at that time?

A. I wear a wrist watch, a wedding ring, gold earings. You want a list of everything that I own?

THE REFEREE: Maybe if we summarize it, Mrs. Faye --

THE WITNESS: I don't understand.

THE REFEREE: -- aside from this ten carat ring, on June 22, or thereabouts, when your husband called, can you give us some idea of what you consider to be the fair value of all your jewelry other than the ten carat ring? Over $100.00?

THE WITNESS: Over a hundred dollars, yes.

THE REFEREE: Over $100,000.00?

THE WITNESS: No, sir.

THE REFEREE: Over $50,000.00?

THE WITNESS: No, sir.

THE REFEREE: Over $10,00.00?

THE WITNESS: No, sir.

THE REFEREE: $5,000.00?

THE WITNESS: No.

THE REFEREE: $2,000.00?

THE WITNESS: Maybe.

Q The only item of jewelry which you did pledge on the 22nd, though, in response to Mr. Faye's request was this ten carat diamond ring?

A. Yes.

MR. ZITTER: Your Honor, I have no further questions.

THE REFEREE: Have you anything else,

Mr. Leinwand?

MR. LEINWAND: Yes, I have a few questions, if I may.

Do you have a copy of the letter, Exhibit 5?

MR. ZITTER: Yes.

REDIRECT EXAMINATION

BY MR. LEINWAND:

Q Would you be good enough to look at Trustee's Exhibit 5 and advise the Court as to what happened to the loan number 81348, what happened to that jewelry?

A That was the evening bag and the diamond pendant and stone necklace.

Q Right.

A The evening bag was left in Provident Loan and I redeemed the necklace.

Q Do I understand that the necklace was a $250.00 necklace?

A It was in Provident on loan for $250.00.

Q Is it a fact that the evening bag was taken by Hammerman Brothers?

A Yes, sir.

Q So that Hammerman Brothers would have that now?

A Yes, sir.

Q And, therefore, when it says loan 81463 was

redeemed on July 12, 1971, it is not by you?

A. No.

Q. It is by Hammerman Brothers?

A. Yes.

MR. ZITTER: Objection.

Do you know for a fact that Hammerman Brothers was the one who redeemed that loan?

THE WITNESS: Yes, I know it for a fact.

Q. Now, in connection with the next item, two loans amounting to $7 -- it looks like $7800.00, it says collateral for loan 25658 was pledged on March 2, 1971, and loan 25657 on June 22, 1971, by Mrs. Harriet Faye. Both were redeemed on July 20, 1971, by payment of the principal of $4,000.00 and $3500.00 and interest of a certain amount, respectively. This collateral was repledged on the same date for the amount indicated, and I won't read any further.

Did you take out this jewelry and pay the money?

A. No, I did not.

Q. Who did?

A. Mr. Leinwand --

MR. ZITTER: Objection, your Honor. I don't believe that the loan was repaid at all.

MR. LEINWAND: I want to show, your Honor -- the implication seems to be that we had $7500.00 to take this out for various reasons. I want to show what actually happened.

THE REFEREE: What does that have to do with the objections to discharge, incidentally?

MR. LEINWAND: He brought it in.

THE REFEREE: Because someone dredges in something and it's received without objection, I don't see why we have to try sub-issues.

MR. LEINWAND: The reason why, your Honor, is to go into the question of good faith, and if I may, I would like to have her testify, and I have another witness who was the one and showing the reasons for it. May I proceed on that basis?

THE REFEREE: Off the record.

(Discussion off the record.)

MR. LEINWAND: I will not proceed. I am withdrawing that. But I would like to proceed on the basis of the Gimbel's ring and whether he knew about it, although I think we have covered it already.

BY MR. LEINWAND:

Q You had testified previously that the first time you went to Gimbel's, Mr. Faye was with you?

A Yes.

Q At that time, did you tell Mr. Faye that you were going to buy an expensive ring?

A No.

Q Did you go there to buy a ring?

A No.

Q What did you go there for?

A I went there to buy a fan and an electric broiler.

Q Did you ultimately buy something at the jewelry department?

A Yes, I did.

Q What did you buy?

A I took home a bracelet and two rings, and I bought just --

Q What was the total amount of the three items?

A I just don't recall the total amount.

Q Would you say it was more than $500.00?

A Oh, yes. It was a few thousand dollars, I believe.

Q Did you thereafter return all except one item?

A Yes.

Q What was the one item?

A It was a lapis ring, lapis gold ring.

Q Approximately how much was that ring?
A It might have been three or four hundred dollars. I don't remember the exact amount.
Q You didn't return it because that was an item that couldn't be returned?
A It was a final sale.
Q It was a final sale?
A Yes.
Q There has been testimony that thereafter you returned to the store. Do you recall that?
A I returned to the store to return the bracelet and the ring.
Q Was Mr. Faye with you at that time?
A No, sir.
Q You have so previously testified?
A Yes.
Q Is that still your testimony?
A It certainly is.
Q There is no question in your mind to that effect?
A There is no question.
Q At that particular time, did you then ask to see another ring?
A No. I saw it in the case as he was making out

the return credit for the other jewelry, I saw the ring in the case and I asked the salesman if I could look at it, and I looked at it and I asked him about it and spoke about it and I loved it, I liked it and I said I am going to buy it.

Q Did you then order that ring?

A I took it, yes.

Q Now, at that time, which was, I believe, July 20 --

A It was on a Monday.

MR. ZITTER: I believe we are in June.

MR. LEINWAND: June 20, I think it is.

MR. ZITTER: June 21.

Q You testified that Mr. Faye was not with you at that time?

A Yes, sir, that's right.

Q He knew nothing at that time about your buying the ring?

A No.

THE REFEREE: Do you know where Mr. Fay was at that time?

THE WITNESS: He was in his office, I imagine. It was a business day.

THE REFEREE: He was not out of town. He

was in New York?

THE WITNESS: Yes.

Q Did you then go home with the ring or without the ring?

A I went home with the ring.

Q Did you show it to him that night?

A No.

Q Did you tell him you had the ring?

A No.

Q Why not?

A Because I thought he would scream and holler and carry on, so I just thought I would wait until the opportune moment and then tell him that I bought it.

Q You would wait for a propitious time when he was in a good mood?

A I don't know what "propitious" means. Until he would be in a good mood.

Q When was the next time that there was any discussion -- I withdraw that.

Did you thereafter receive a telephone call from Mr. Faye with a request that he needed money for the business, to sell your jewelry?

A Yes. He said he needed money --

Q At that time, had you told Mr. Faye --

THE REFEREE: When was this with respect to the date that you took the ring back from Gimbel's, Mrs. Faye?

THE WITNESS: I believe it was a few days after I had taken the ring.

THE REFEREE: The documentation establishes it was the next day. Does this refresh your recollection as to when it took place?

THE WITNESS: To me it seemed as though it was a few days later, sir, but if --

Q But certainly within a few days he then called you?

THE REFEREE: No. Mr. Leinwand, I don't think we can duck this off "certainly within a few days." It's rather important.

MR. LEINWAND: It's a question of one or two or three days.

THE REFEREE: Is there any question of the documentation that Mrs. Faye picked it up on the 21st, and the very next day she went to Provident Loan?

MR. LEINWAND: No.

THE REFEREE: Off the record.

(Discussion off the record.)

Q You don't know, do you, when exactly, what date it was, but it was after you had this ring?

A Yes.

Q Now, at that time when Mr. Faye called you, did he know that you had bought this ring?

A No, he did not.

Q So he couldn't have told you to pawn this ring, could he?

A No.

MR. ZITTER: Objection.

THE REFEREE: Sustained.

Q Actually what did he say to you?

A That he needed some money, a few thousand dollars, and to take what I have of value and to go and take a loan on what I had and see if I could raise three thousand dollars for him.

Q You did that?

A Yes.

Q Now, you have testified that you had done that on occasions before; is that correct?

A Yes.

Q Can you tell the Court approximately how many previous occasions and over how long a period of time had you done that.

A Over twenty years?

Q Yes.

A Five, six, seven times.

Q On those previous occasion, were the rings or the jewelry always taken out?

A Always.

Q Did Mr. Faye ever go broke before?

A Never.

Q But over the twenty years, was he in difficulties from time to time?

A Not that I knew of. I always lived in the same consistent way, even when I brought the ring in I still had a yacht with a captain, with a steward. I mean, I had no impression that anything wasn't good.

Q So, as far as you were concerned, that was the way he lived and that was the way you lived?

A That was the way of living.

Q You didn't know that there was any possibility of bankruptcy, did you?

MR. ZITTER: Objection.

THE REFEREE: Overruled.

Q Will you answer the question? Did you know of any question of bankruptcy?

THE REFEREE: When?

Q On, first, June 20?

A No.

Q In July, did you know of any such question?

A No.

Q Does he tell you everything about his business problems?

A Almost nothing.

Q Did you ever work in his office or do anything in his office?

A No.

Q Did you ever have anything to do with books and records?

A I know nothing about that.

MR. LEINWAND: That's all, your Honor.

MR. ZITTER: I have no further questions.

MR. LEINWAND: I am sorry. If I may, just one question.

Q Prior to June 20, 1971, did Mr. Faye ever say to you "I need money, I want you to go and buy a ring and then take it and pawn it"?

A Never.

Q Did he ever say it to you in the twenty years he's been married to you?

A Never.

Q Did he ever do anything like that?

A Never.

Q You understand that you are under oath?

A Yes, I swear to God.

Q There is no question in your mind about that?

A No question.

THE REFEREE: Anything else, gentlemen?

MR. ZITTER: No, nothing.

MR. LEINWAND: Then, I think, your Honor, under the circumstances, we will rest, and I assume Mr. Zitter says he will rest.

MR. ZITTER: Your Honor, if I may, do you believe that there will be anything gained by the opportunity to submit post-trial briefs on whatever issues you feel are necessary, but particularly on the issue of the ownership of the jewelry as that might be affected by the statements of Mr. Faye or Mrs. Faye?

THE REFEREE: Well, what's running through my mind is -- it's still fairly early in the afternoon -- if you gentlemen wish, I will listen to you in summation. I had indicated to you before that to me the only possible basis for an objection to discharge here would be

a finding that Mr. and Mrs. Faye, on June 21 or shortly before, came to a conclusion that they had to raise some money and that the way to do it would be for Mrs. Faye to buy a stone from Gimbel's on memo and then immediately thereafter pledge it to Provident Loan.

Now, the prima facie case is certainly spelled out by the almost simultaneous flow of events here: June 21, the purchase of the ring, the taking of it on memo and then the following day the pledge.

But what I am faced with is this simple question. I don't think there is anything else in the case. Did Mr. Faye by during the following testimony: "To your knowledge, did Mrs. Faye purchase the ring with the intention of pledging it subsequently to obtain funds?

"MR. LEINWAND: I object to that, your Honor.

"THE REFEREE: Overruled.

"No, no. She.

"A She did not."

To sustain these objections -- and I think there is nothing else in the case --

am I to disbelieve Mr. Faye and Mrs. Faye.

MR. ZITTER: It's not only the issue of disbelieving Mr. and Mrs. Faye. I believe there was the testimony originally by Mr. Choiley --

THE REFEREE: Mr. Choiley came in and very clearly testified that Mr. Faye was present on the 21st, he had no doubt of that. You may recall I asked Mrs. Faye where was Mr. Faye on the 21st. She said "I assume he was at the office."

Now, this is at best arguable, as to whether this fraudulent act took place, namely, did they go in to Gimbels on the 21st with the intention of taking Gimbel's property to raise money through the Provident Loan the next day.

MR. ZITTER: Other than the sequence of events, including the prior pledges, one was in a week before the questioned transaction took place, other than Mr. Choiley's testimony that both he and Mrs. Faye were present when the fifteen carat diamond ring was discussed and purchased, all of the other elements of the objection to discharge are really part

of the conversation between Mr. and Mrs. Faye and other than tapes of those conversations, the trustee has no way of proving those.

THE REFEREE: It's a question of reasonable inferences from all of the evidence.

MR. ZITTER: From the facts, yes, your Honor.

THE REFEREE: We start with the proposition that on June 21, let's say, Mrs. and Mrs. Faye went in to Gimbels and the following day Mr. Faye calls Mrs. Faye and says "look, I am in trouble, I need $3500.00, pawn all of your jewelry, if necessary, but I need $3500.00."

She then went to the Provident Loan. The question is, on the basis of that, do I conclude by the very strong -- it's beyond a preponderance of the evidence -- was this part of a scheme in order to raise the money and did Mr. Faye lie about that when he answered.

Now, if you see anything else in the case beyond this, I will certainly hear you on it.

Yes, Mr. Fabrizio.

MR. FABRIZIO: As an attorney representing a creditor here, and since this case has been

spread over such a long period of time, I would like to refer the Court back to specification one and remind the Court that there was substantial testimony from various witnesses as to the concealing of the liability to Gimbel's by Mr. Faye and this was a question of whether there was a necessity, etc., without concealing the asset.

THE REFEREE: Well, we went over this with the testimony of Mr. Krause and we don't have to characterize that, but what does that have to do with number one, namely, that this ring was, in fact, the ring of Mr. Faye?

MR. FABRIZIO: I believe the trustee's intention was to show that by concealing the asset, coupled with all the facts gone over in specification number three, that this was actually Mr. Faye's asset and not Mrs. Faye's asset.

THE REFEREE: You say that by concealing or by not concealing it?

MR. FABRIZIO: By concealing the liability, the indebtedness to Gimbel's plus all of the circumstances.

THE REFEREE: I think we have to attribute

to Mr. Faye not only a lack of common sense, but practically -- well, almost imbecility if we are going to say that he concealed the obligation to Gimbel's as the purchase price of a valuable ring, but he was going to fool the world and he was not going to list the ring. This argument just defeats itself in the presentation of the argument, as I see it.

MR. LEINWAND: Furthermore, your Honor, I don't notice Gimbel's coming in here and claiming to be a creditor, a non-dischargeable creditor, etc. This is another factor which counsel has not brought out.

THE REFEREE: This is a little too subtle to enter into our reasoning here, the fact that Gimbel's doesn't come in. Maybe they are insured. I have no notion at all. I just don't know. That would be purely speculative. But if we then skip over two, which has been dismissed, and if we go to three --

MR. FABRIZIO: If I may make just one observation as to number three, I think the crux of the matter is the plausibility of the explanation of the sequence of the

transactions on June 21 and June 22nd, and I think that the Court should consider the fact that on June 16, as it was brought out today, Mr. Faye asked Mrs. Faye to pawn substantially all of her major jewelry, and she did do that a few days before this transaction, which in my mind makes the explanation of Mr. and Mrs. Faye all the more implausible.

THE REFEREE: Is that what's shown on Exhibit 5?

MR. FABRIZIO: Yes, Your Honor. I think that's also substantiated by Mrs. Faye's testimony that on the 16th she pawned all of her substantial jewelry.

MR. LEINWAND: Not substantially. She just said enough to warrant a thousand dollars. I don't think she said that at all. As a matter of fact, she says he needed about a thousand dollars and she pawned enough for that.

MR. FABRIZIO: Well, your Honor, by the 21st, the only substantial piece she had left was this ring which Mr. Faye supposedly knew nothing about.

THE REFEREE: Off the record.

(Discussion off the record.)

THE REFEREE: All right, ten minutes.

(A recess was taken.)

MR. LEINWAND: Your Honor, we have an explanation for it.

I have spoken to Mrs. Faye and she has refreshed my recollection. Would you want to hear her testify or would you want me to explain what they have told me.

MR. ZITTER: I would object to any re-opening of the case at this point after both sides have rested.

THE REFEREE: No. You may recall Mrs. Faye and/or Mr. Faye.

MR. LEINWAND: May I quote what happened?

THE REFEREE: No. I think we should do it the way the lawyers do it, you know, witnesses, a trial, issues.

MR. LEINWAND: I suggested it.

Mrs. Faye, would you take the stand.

H A R R I E T F A Y E , having been previously sworn by the Referee, was recalled and testified further as follows:

RE-REDIRECT EXAMINATION

BY MR. LEINWAND:

Q Mrs. Faye, do you recall testifying this afternoon about your going to Provident and having a division of the transaction of June 16, 1971, where you had pawned certain jewelry and obtained a thousand dollars?

A Yes, sir.

Q Do you recall stating that you paid $250.00 plus some $2.00 interest and got a portion of the jewelry?

A Yes.

Q Will you state what jewelry it was that you took out and the reason for it?

A The jewelry I took out was a chain and a pendant. The pendant had been given to me by my deceased husband and was very precious and had a lot of sentimentality to me, and I just had to get it out because I missed it so much that I had to get it out.

Q Now, did you have the money yourself?

A Yes, sir.

Q The two hundred fifty dollars you had and you used that money?

A Yes.

Q Was this on June 22nd, the same day that Mr. Faye had called you?

A Now that I recollect, it was late in the afternoon, just as they were closing, I went in and I purchased it.

Q At that particular time, when you had the division situation, you arranged to take it out and put the other back and got another pawn ticket?

A Oh, yes.

Q Did you give that pawn ticket to Mr. Faye?

A Did I give it to Mr. Faye?

THE REFEREE: If I may, Mr. Leinwand, please: Mrs. Faye, did you have several transactions with the Provident Loan Society on June 22nd, 1971?

THE WITNESS: Yes.

THE REFEREE: All right, would you tell us when you had the first transaction in the course of the day, was it before noon, after noon or were they both at the same time?

THE WITNESS: No, they were not at the same time. One was in the morning and one was late in the day, I imagine about four or four-thirty.

THE REFEREE: Now, from your prior testimony, are you telling us that the second transaction late in the afternoon was the one that's

first mentioned in trustee's exhibit 5 in evidence? This is the division transaction, Mrs. Faye.

THE WITNESS: The first one was in the afternoon.

THE REFEREE: Now, would you tell us about the first one, would you tell us what precipitated that.

You got a call from Mr. Faye?

THE WITNESS: Yes, I did in the morning.

THE REFEREE: Were you at home?

THE WITNESS: I was home.

THE REFEREE: He was calling from the office?

THE WITNESS: Yes.

THE REFEREE: Would you tell us what he said to you.

THE WITNESS: He told me that he needed a certain amount of money, I think it was about $3,000.00, $3500.00, I don't exactly remember the amount, and I should take some jewelry and take it to Provident Loan and get some money on it.

THE REFEREE: You have already described that transaction to us.

THE WITNESS: Yes.

THE REFEREE: Now, would you clear up, though, the situation in the afternoon. It was this that caused us to re-open this because Mr. Fabrizio pointed out the inconsistency of your pledging the ring to raise the $3500.00 and at the same time redeeming other property. Now, was it the substance of your testimony that because of the sentimentality attached to the diamond pendant that you wanted to get that out?

THE WITNESS: It's not a diamond pendant, sir. It's a gold -- there is one little chip in it.

THE REFEREE: All right.

THE WITNESS: I was getting dressed late that afternoon to go somewhere and I just had a feeling I wanted that item to wear and I wanted that and that I missed it terribly. So I got into a taxi and I went to Provident Loan just before they were closing and I removed the piece.

THE REFEREE: All right, that explains it, Mr. Leinwand.

Off the record.

(Discussion off the record.)

THE REFEREE: Mr. Zitter, do you wish to cross-examine on that subject?

MR. ZITTER: Yes. I just have a few questions.

RE-RECROSS EXAMINATION

BY MR. ZITTER:

Q I believe earlier this afternoon you testified in response to my question as to what jewelry you had on June 22 when you received the call from Mr. Faye to go pledge everything, that you pledged everything except what had been given to you by your previous husband; is that correct?

A No. I had some other items, sir, that I didn't -- I didn't say everything that Mr. Faye had given me.

Q Items of value?

A Value, of substantial value, over a certain amount of money? I don't understand, Mr. Zitter.

MR. LEINWAND: Her testimony was not --

THE REFEREE: Please, Mr. Leinwand --

MR. LEINWAND: I just want to correct it.

THE REFEREE: Just a minute.

Mrs. Faye has answered a question. You could have raised an objection to the accuracy

of the recapitulation of the testimony, but you didn't. Now Mrs. Faye has answered, so that's the end of it.

Any other questions?

Q What did you testify to about which particular items of jewelry you thought you should pledge?

A Right now, I have forgotten my name.

MR. LEINWAND: May I suggest the reporter read back the minutes, if you want to.

THE REFEREE: No. I suggest that we permit the witness a few seconds to try to recapture her thoughts and tell us.

THE WITNESS: Repeat the question again, please, Mr. Zitter.

Q I would just like to know what your testimony was or what was the fact about which particular items of jewelry you felt you could pledge on June 22nd and which you felt you could not pledge in response to Mr. Faye's request to pledge everything?

A No. I looked through my things and I thought this would be the thing that would bring in the amount of money that I needed -- that he needed.

Q Just that one particular item of jewelry?

A Yes.

Q Did you previously testify that you did not feel that you could pledge items of jewelry which were given to you by your prior husband?

A No, I didn't say that.

MR. LEINWAND: I object to that because that is not her testimony.

THE REFEREE: Sustained.

MR. ZITTER: I said did you previously testify.

THE WITNESS: No.

MR. LEINWAND: Please don't answer. The objection was sustained.

THE WITNESS: I am sorry.

MR. ZITTER: No further questions.

MR. LEINWAND: That's all.

THE REFEREE: All right, thank you very much, Mrs. Faye.

MR. LEINWAND: Your Honor, off the record.

(Discussion off the record.)

THE REFEREE: The bankrupt then will submit a proposed set of findings and conclusions with a post-trial memorandum within two weeks.

MR. ZITTER: The schedule might be difficult because of the lack of minutes of

this proceeding and the last one.

(Pause.)

THE REFEREE: Your proposed findings, conclusions, etc., December 17, and you want two weeks after that, I take it, Mr. Zitter, Mr. Fabrizio?

MR. ZITTER: Yes. I think that would be reasonable.

THE REFEREE: January 4 then.

(Hearing closed.)

INDEX

WITNESS	CROSS ZITTER	REDIRECT Leinwand	RE-REDIRECT Leinwand	RE-RECROSS Zitter
H.Faye	3	24	42	47

EXHIBIT

TRUSTEE'S	DESCRIPTION	FOR ID.	IN EV.
Ex. 5	Letter dated April 29, 1972 on the stationery of the Provident Loan Society	9	10

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter	:	
of	:	In Bankruptcy No. 71 B 903
MAT FAYE, Individually, formerly a member of a partnership with MAYER FISCHER and EARL SALLECK, d/b/a BUSINESS TRADERS, and with LAURENCE KUHNS, d/b/a C & F DISTRIBUTION CO.,	:	
Bankrupt.	:	

Before:

HONORABLE EDWARD J. RYAN
Bankruptcy Judge

DECISION ON OBJECTIONS TO
THE DISCHARGE OF THE BANKRUPT

TO: KENNETH ZITTER, ESQ.
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Kat Faye, an experienced businessman was adjudicated bankrupt on his voluntary petition filed on September 15, 1971. Kenneth Zitter was appointed trustee in bankruptcy. After examining into the acts, conduct and property of the bankrupt, Mr. Zitter filed specifications of objections to discharge, three in number, on October 15, 1972. In substance, the trustee accuses the bankrupt in count (1) and (3) with having violated Title 18 of the United States Code, Section 152 in that he knowingly and fraudulently made false oaths in relation to the bankruptcy proceeding. In specification (2), the trustee claims that the bankrupt has failed to keep or preserve books of account or records from which his financial condition and business transactions might be ascertained.

The matter came on for trial and was several times adjourned. Testimony was taken and exhibits were received in evidence. At the trial, the Court dismissed the objection to discharge relating to the claimed failure to keep and preserve books and records. In the trustee's

post trial brief, he again argues that this objection to discharge should be sustained. I adhere to my earlier ruling. The testimony of Bernard Augen, a Certified Public Accountant, showed that the bankrupt's books were in proper condition and that his books and records as a whole were those of the average bankrupt. Mr. Augen has considerable experience and expertise in insolvency accounting.

In the first specification the bankrupt is accused of knowingly and fraudulently making a false oath by omitting from his verified schedules of assets his interest in a valuable diamond ring. The trustee in his third specification accuses the bankrupt of testifying falsely with respect to the intention with which that ring was purchased. I find that the first and third specifications of objection to discharge have been proven by the requisite proponderance of the evidence and the bankrupt must be denied his discharge.

The crux of the controversy simply stated is whether Mrs. Faye with the acquiescence of Mr. Faye acquired the 10 carat diamong ring with the intent to raise needed

cash for Mr. Faye's use in his business activities. A scrutiny of the entire record persuades me that the trustee's contentions of fact and law are correct.

During the month of June 1971 both Mr. and Mrs. Faye visited M.J. Marcus Jewelers operated under a lease in Gimbel's Department Store in New York City. On one of those occasions Mr. Faye executed the application for credit identified as Trustee's Exhibit 3. On June 21, 1971 the jewelry salesman released on memo a 10 carat diamond ring with a purchase price of $15,515. There is a controversy whether Mr. Faye was present with his wife at Gimbel's on June 21, 1971. The salesman testified that he was; the Fayes denied that he was present. Assuming that Mr. Faye was not present, his absence would not affect the outcome of the instant proceedings on the objections to his discharge. All the attendant uncontradicted circumstances require the Court to draw the inference that Mrs. Faye did acquire the ring on memorandum with the purpose of pledging it to raise cash. On June 22, 1971 the large diamond ring was pledged with the Provident Loan Society of New York as collateral for a loan of $3,500. The proceeds of the loan were used

to cover shortages in Mr. Faye's bank account.

As hereinabove mentioned the sale was "on memo". On July 7, 1971, the salesman spoke with Mr. Faye to ascertain whether the sale was to be completed. After he attempted to induce the salesman to reduce the price, the sale at the negotiated price was confirmed.

The third objection to discharge in substance alleges that Mr. Faye falsely testified at the adjourned meeting of creditors held in this court on September 19,1972, when he said in effect that the 10.5 carat diamond ring was purchased by his wife with her own funds, and when he further testified that she did not "purchase" the ring with the intention of pledging it subsequently. The transcript of the perjurious testimony is appended to the objections to discharge as Exhibits"A and B".

I am fully mindful that fraud will not be lightly inferred and that Congress designed the Bankruptcy Act to give a debtor an opportunity for a fresh start, and that denial of a discharge in bankruptcy is a most punitive measure. In re Ostrer, 393 F. 2nd 646 (2 cir. 1968); In

re Tabibian, 289 F. 2nd 795 (2 cir. 1961). However a discharge in bankruptcy is not an absolute right. Rather, it is a privilege available only to the honest bankrupt. Collier on Bankruptcy, 14th Ed., paragraph 14.02 (1).

The story told by the bankrupt and his wife does not have the ring of truth. It is incredible that this very valuable diamond ring was acquired in the circumstances as claimed by the bankrupt and immediately thereafter pledged. The evidence shows that Mr. Faye was experiencing financial difficulty in the period prior to June 21, 1971. Although Mrs. Faye denied any knowledge of her husband's financial troubles, the evidence demonstrated that by direction of the bankrupt, she had pledged a considerable amount of her jewelry at the Provident Loan Society on two separate occasions, viz., March 2, 1971 and June 16, 1971. It is worthy of special note that the bankrupt listed an obligation to Gimbel's in the amount of $16,000 in his schedules and at the trial of the objections to discharge the bankrupt sought to persuade the Court that this obligation to Gimbel's was included because a husband is generally liable for "necessaries" supplied to his wife.

Although the bankrupt and his wife did testify with respect to their lifestyle, this explanation is not worthy of belief. Further, although Mrs. Faye had on occasion purchased luxuries and returned them when Mr. Faye protested, I cannot and do not believe that in the circumstances of financial distress which existed on June 21,1971, Mrs. Faye could have expected that Mr. Faye would indulge her in the purchase of so expensive an item of jewelry.

In summary I find that in concert, Mr. and Mrs. Faye caused the diamond ring to be purchased "on memo" so that it could be immediately pledged with Provident Loan Society to raise cash needed by the bankrupt. I infer that the real party in interest in the transaction was the bankrupt. Cf. Lindt v. Henschel, 25 N.Y. 2nd 357 (1969).

Accordingly I find that the bankrupt knowingly and fraudulently made false oaths in relation to this bankruptcy proceeding in violation of Title 18, United States Code, Section 152 and he must be denied his discharge in bankruptcy. Bankruptcy Act Section 14.c.(1). It is so ordered.

DATED: New York, New York
November 26, 1974.

EDWARD J. RYAN
Bankruptcy Judge

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In the Matter of

NAT FAYE, etc.,

Before:

HON. DUDLEY B. BONSAL,

District Judge

New York, New York
April 16, 1975 - 11:30 a.m.

APPEARANCES:

LEINWAND, MARON, HENDLER & KRAUSE, Esqs.
Attorneys for Nat Faye
BY: STANLEY B. HENDLER, Esq.,
Of Counsel

KENNETH ZITTER, Esq.,
Trustee.

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THE COURT: Mr. Hendler, you may proceed.

MR. HENDLER: Your Honor, this is an appeal from the Referee's decision, Bankruptcy Judge, as he is now called, issued by Bankruptcy Judge Ryan on November 26. Your Honor has before him the Minutes, the exhibits and the testimony. But, the chronological sequence of events here clearly indicates that there has been a gross abuse of the bankruptcy judge's discretion, and the evidence uncontroverted clearly under Bankruptcy Rule 810, general order as it existed at the time of the hearing 47 of the bankruptcy general orders -- that the testimony adduced at the trial did not warrant or determine the decision of the Court.

I attribute much of this to the following time sequence, which I think is vital for the Court --

THE COURT: What is the standard, as you see it, what is my standard of review here? I can't review all these findings of fact, can I? Is the issue whether his findings were clearly erroneous?

MR. HENDLER: Yes, your Honor.

THE COURT: That's the standard?

MR. HENDLER: That's the standard. If I might, your Honor, and the issues are vital. We are dealing with an individual who is seated in court behind me who is a mature individual, a family man, has had and garnered a

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tremendous respect in the community, active in charitable endeavors, and has never had a blemish against his name in all his life, but was involved in business reverses that warranted filing a petition in bankruptcy.

This particular client came to us with a full disclosure to us, his counsel, of the facts, and we rendered a legal decision on the significance of the facts as it applied to his bankruptcy schedule. This is not a matter of concealed assets that came out inadvertently on testimony of third parties that everybody was caught off guard with.

The very facts that form the standard of this appeal or the basis of the appeal was disclosed to my firm as counsel. My firm, incidentally, your Honor, is specialists in bankruptcy matters. Ninety percent of our practice is geared for this and has been for 25 years. This matter has been handled by senior partners in my firm right from the inception. Although I did not handle the matter initially, I am now arguing the appeal.

I see, based upon the testimony -- and I know of your Honor's busy schedule, the Minutes are replete --

THE COURT: I have to review the record, obviously, which I have not done, but I have to do that.

MR. HENDLER: The petition was filed on September 15, 1971. By the time hearings were conducted

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before the Referee, because of a busy calendar, the manner in which he conducts his courtroom and the time allocated to him, a hearing in connection with this discharge accrued approximately 15 months after the bankrupt filed his petition.

The trial, which wasn't that complicated, because of the busy court calendar took approximately one year to try a simple discharge question.

THE COURT: You mean there were several hearings?

MR. HENDLER: Several hearings, adjournments, court problems, vacation schedules of the Court, vacation schedules of the participants, other pressing calendar matters that the bankruptcy judge could not hear this in a normal period of two days where the facts were fresh in his recollection.

THE COURT: So that your point is he would have a hearing and then it would be adjourned for a period of time and then come back?

MR. HENDLER: Yes, and this hearing, your Honor, took one year. At the conclusion of the hearing, and the records that we have and the records of the referee -- I might indicate, Judge, before your Honor is the Minutes. The last date of the hearing on the trial took place on November 5. On November 5 the bankruptcy judge, as he was

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then called, Referee in Bankruptcy, stated on Page 39 of the stenographic Minutes dated November 5, 1973, called "The Referree" here and now subsequently by the rule change called "The Bankruptcy Judge":

"I think we have to attribute to Mr. Faye," the bankrupt, "not only a lack of common sense, but practically, almost imbecilic, if we are going to say that he concealed the obligation to Gimbel's as to the purchase of a valuable ring, but he was going to fool the world and he was not going to list this ring. This argument just defeats itself in the presentation of the argument."

This was at the conclusion of the trial. Had the judge rendered a decision on that date, there is no question in my mind, your Honor, that he would have granted the bankrupt's discharge. But, succinctly, if I might sum up hundreds of pages of testimony and apprise your Honor of the significance of this transaction, the uncontroverted evidence shows that the bankrupt's wife went to Gimbel's, purchased a diamond ring, 10 karat ring, worth $15,000, on her credit card where she had credit with Gimbel's for 15 years and had credit with every major department store in the city, was a woman whose style of living was elegant.

This bankrupt a year before his petition had a 60-foot yacht, a skipper and crew, but adverse conditions

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put him in this predicament. His wife all through the years, they were married for 26 years, had always purchased items of value and her husband ultimately paid these obligations.

The wife went to Gimbel's three months prior to the filing of the petition in bankruptcy, purchased the ring on her credit. The husband was not present at the time the purchase was made.

THE COURT: I think as I recall it in reading the papers, there is a difference of opinion on that. That's a question of credibility. Didn't the fellow from Gimbel's say they both were there?

MR. HENDLER: The fellow from Gimbel's said they both were there, but he sees hundreds of people, and to his recollection two years later they both were there.

THE COURT: All I am saying, there is a question of credibility on this.

MR. HENDLER: I think the uncontroverted testimony of even the salesman and the credit woman from Gimbel's, a Mrs. Goodman, showed clearly that the ring was purchased on credit. Yet, the Referee's decision talks of a memorandum, on memorandum, not on credit, which defeats the very concept of the purchase.

THE COURT: Let me ask you this. As I recall it,

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the next day the ring was pledged to the Provident Loan Society.

MR. HENDLER: Precisely.

THE COURT: I take it was to help out in the business?

MR. HENDLER: Precisely. The bankrupt then no longer had custody of the ring. The ring was in the possession of Provident Loan, owned by the wife. The bankrupt never had the ring. He claimed he never purchased the ring.

If Gimbel's felt that they were aggrieved and a fraud was committed upon them, they could have come into this court, and for what reasons they did not, I don't know. They could have claimed this claim was undischargeable, the bankrupt improperly on a fraudulent scheme purchased the ring. But the bankrupt never purchased the ring, he never owned the ring. His wife had pledged it for his benefit, I will agree, within 24 hours after she purchased it and didn't pay for it.

There may be a fradulent connotation, I don't think that even existed, but it certainly is not grounds to establish that the bankrupt owned this ring, concealed the ring and therefore the grounds of objecting to the discharge was based upon three statements of the trustee, who is here

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pro se.

Failure of this bankrupt to keep books and records in a multimillion-dollar business, which is the normal factor --

THE COURT: As I understand it, the specification --

MR. HENDLER: If this bankrupt were not an honorable individual, certainly with a Clarence Raines firm who made the audit for the City of New York in connection with their books -- came back and said this bankrupt maintained over 20 years proper books and records, no impropriety.

THE COURT: I am not concerned with that.

MR. HENDLER: That's an indication of the metal of the individual. Clearly, the testimony of one of our partners in the firm said the bankrupt disclosed this transaction, and the reason the bankrupt listed individuals in the schedules was that the bankrupt might have been held liable for the necessities of his wife on this Rosensteil decision, based upon their prior standards of living.

But, I refer also to the bankruptcy judge's comment on steno Minutes Page 57 dated January 17, 1972, and the bankruptcy judge at that time stated, "The trustee has had ample opportunity to do whatever investigation he wants to do. Mr. Faye strikes me as a man who has been

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entirely candid here."

I do frankly feel that this has been a determination by the Court prepared perhaps with the assistance of the Clerk to the Bankruptcy Judge, whoever he may have had at the particular time, and the busy calendar of the Court, that the Bankrupty Judge realizing the significance of an adverse determination relied upon some third party, possibly, to read the Minutes and came up with --

THE COURT: I don't know about all that. I have to read the transcript and make a conclusion on the basis of the standard whether his finding was clearly erroneous. If I find it was clearly erroneous, it doesn't matter whether he consulted with a third party --

MR. HENDLER: I only give the reason, Judge, and I respect the opinion of Bankruptcy Judge Ed Ryan. He is a very full, competent trial lawyer as well as a judicial officer.

THE COURT: Your point is having this gone on for so long --

MR. HENDLER: Yes, the delay, because if you looked at his comment two minutes before he was about to render a decision, he said it was incredible to believe the kind of story that the trustee felt did exist. I don't fault the trustee. The trustee frankly is a competent

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counsel but this is the first bankruptcy case he has been involved in, and he has done what he believes and I believe has been a competent, thorough job as a disinterested party.

But, I think the sophistication and the awareness of the complete set of facts here clearly indicate, your Honor, that this has been an erroneous decision by the Court and a gross abuse of the process of the Court to make such an adverse determination, and it only requires, unfortunately, your Honor, with the time schedule, a careful reading of the Minutes by this Court.

I do submit the significance of an adverse determination will be a tremendous negative psychological effect on my client, who has always been a pillar in the community, a man well respected, well admired, who is not a youngster, and does not warrant having his discharge in bankruptcy denied on the basis that he didn't know of the purchase of the ring.

The ring was purchased by his wife, the evidence shows it was purchased by his wife. She did pledge this ring for his benefit. She did this on four other occasions and throughout her life she had made similar purchases.

THE COURT: Thank you very much. All right, Mr. Zitter.

MR. ZITTER: Your Honor, my name is Kenneth Zitter.

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I am trustee, pro se, in this matter. I would just like to address myself preliminarily to some of the remarks which Mr. Hendler made. He stated correctly that the trial of this matter took place over the course of I believe a year, and the transcript was rather lengthy.

However, at the end of the trial both sides were afforded an opportunity to submit post-trial memoranda, and indeed lengthy memoranda were submitted. Any inference that the bankruptcy judge did not have the full record in front of him or that it was not fresh in his mind at the time he made his determination I would submit is erroneous.

There are two main issues here, and I believe they are narrow and fairly well defined. As your Honor has already noted, the issue here is whethe or not the bankruptcy judge's finding was clearly erroneous. The first specification charged that Mr. Faye made a false oath with respect to these proceedings when he stated that the 10.5 karat diamond ring was not purchased with the intention of pledging it. He made that statement clearly and unequivocally. That testimony is appended to the specifications of objections to discharge.

The facts here speak otherwise, and that's what Referee Ryan found. On June 21 a $15,000 diamond ring was purchased from Gimbel's on memo, contrary to Mr. Hendler's

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suggestion, it was taken on memo and the sale was not finalized until July 7. On June 22, one day later, that ring was taken and pledged with Provident Loan Society for a $3,500 loan which was put into Mr. Faye's business. So just those facts standing alone, the fact that Mr. Faye concedes that these are times of financial difficulties for him, the fact that this was a mere three months before he filed his petition in bankruptcy, would clearly at least raise an inference in any objective observer's mind that the purpose of his transaction was simply to raise cash to use in Mr. Faye's business, directly contrary to what the bankrupt testified.

Further, if we look beyond just that one fact of the ring being purchased on one day on memo and being pledged the next day, there are other objective indicia that the entire purpose of this transaction was, contrary to the bankrupt's testimony, to raise cash to use in his business.

First, Mr. Faye had pledged jewelry before. Indeed, Trustee's Exhibit 5 is a list of several pledged transactions which Mrs. Faye engaged in. The most recent prior to the time she purchased the ring was on June 16, a mere five days before.

She had gone to Provident Loan Society, pledged

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other jewelry and given the proceeds of the loan to the bankrupt to use in his business. So she was well aware of the fact that at least the bankrupt was calling for money in his business.

Further, at that time Mrs. Faye, admittedly by her testimony, the remaining jewelry which Mrs. Faye had would not support a loan of $3,500, so she could not take whatever she had at that time and go to Provident and raise the $3,500. At least there is an inference that she had to go out and purchase another ring in order to support a loan of that size.

Further, Mr. Faye testified that the reason he needed the $3,500 was that the bank was calling him for the shortages to cover his checking account. I submit that it is reasonable for the Referee to draw the inference that if the bank was calling on a certain day for shortages in a checking account, that Mr. Faye was well aware of the fact that there would be those shortages several days before when the checks were actually written.

So, the uncontradicted facts clearly are not erroneous, and I would submit are substantial evidence in support of Referee Ryan's determination that the bankrupt made a false oath when he testified about the purpose for which the ring was purchased.

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If we go beyond the uncontradicted facts, we have got further testimony from Mr. Choiley, who was the salesman, who is a disinterested witness, and contrary to the assertion made by the counsel for the bankrupt, his commission was never in jeopardy, there is nothing in the record which indicates that -- if we are going to go beyond the record, in fact Marcus Jewelers, for whom he worked, was a separate department in Gimbel's --

THE COURT: I am not sure I am following you. As I recall it, is this on the issue of whether they were both there when this ring was purchased?

MR. ZITTER: Yes, and on the larger question of Mr. Choiley's credibility.

THE COURT: Any mention of commission, I didn't figure out --

MR. ZITTER: The bankrupt's attorney has raised the point that Mr. Choiley had an interest in testifying the way he did because if the transaction was somehow undone he would stand to lose his commission. I am saying that there is nothing in the record which supports that one way or the other. The record is simply devoid of any testimony about whether or not his commission was in jeopardy, and if, as the bankrupt has done, we go beyond the record, I would submit that the contrary is the fact, that Marcus Jewelers

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was a separately leased department, and once a sale was made by Gimbel's, Gimbel's took the credit risk, and Mr. Choiley's commission was never in jeopardy.

Mr. Choiley recalls several circumstances which again clearly indicate the intention with which this ring was purchased. First, he specifically recalls both people being present, and there is certain testimony in the record which would show why he remembered that. He specifically recalled they came in and they didn't want any small pieces, they were looking for one big piece, something meaningful. He showed them the 10.5 karat diamond ring, which is a large diamond ring, and she said, "That's it, we will take it."

Even further, Mr. Choiley recalled that the reason they came in to purchase -- the alleged reason they came in to purchase the diamond ring was because they were going to Florida and they wanted some piece of jewelry --

THE COURT: I remember there was a suggestion that Choiley suggested that he ship it to Florida and they would save the New York sales tax.

MR. ZITTER: Right. I submit that if anybody, particularly in financial difficulties, was looking to purchase a $15,000 item and he was going to Florida, he would clearly be looking to save the $1,000. Yet, they insisted on taking it.

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The subsequent events, I submit, are objective indicia that the intention with which this ring was purchased was clearly to pledge it to raise money for the bankrupt, and, therefore, the testimony -- Mr. Faye's testimony that such was not the intention is clearly a false oath in relation to these bankruptcy proceedings, and, most important, the record clearly substantiates such a finding that that finding would not be clearly erroneous.

We move on to the second point. The second point in the specifications was that the bankrupt concealed an asset from the Trustee, which is an independent ground for denying the discharge. If we take the supposition that this was a scheme concocked by Mr. and Mrs. Faye to purchase a 10.5 karat diamond ring on credit and subsequently pledge it to raise money, I submit that it is clearly his asset, whether or not it was done on her card, whether or not it was done on her sales slip or card or whether or not it was done on his.

She did not have any independent assets of her own with which to purchase this ring. If two people go and embark upon --

THE COURT: Is that brought out in the record?

MR. ZITTER: Yes, it is, your Honor, that is in the record that she did not have any independent assets.

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It is the transcript of December 18, 1972, Page 64. Bankruptcy Judge Ryan cites the New York case of Lindt versus Henschel which supports the proposition that we can look through the form of the transaction to see in substance what was going on here.

At the very least, I would say if Mrs. Faye was there herself, and that is subject to some question, there is at least substantial doubt in my mind tha she was acting as his agent. I would submit that she was acting as his agent, because if we take the bankruptcy judge's supposition, which I submit is supported by the evidence, this was a scheme to buy the diamond ring specifically for the purpose of pledging it to raise money for Mr. Faye.

Whether or not it was done through the medium of Mrs. Faye signing the credit slip, the purpose of this transaction was to get an asset for Mr. Faye's use, and I would note Trustee's Exhibit 3, the credit application, which was executed by Mr. Faye at Gimbel's in connection with the purchase of this $15,000 diamond ring, not by Mrs. Faye.

Taking it one step at a time, if we take the assumption that this was a scheme to get a diamond ring for Mr. Faye, it was his asset, Mr. Hendler has stated that there was full disclosure of this matter to the attorneys. Perhaps that is said with the intent of negating any fraudulent

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intent on Mr. Faye's part, that if he made full disclosure to his attorneys and they advised him that he wouldn't have to file it as his asset or he would have to list it as a liability, that perhaps negates its fraudulent intent.

However, I would like to read just briefly from the Minutes of the September 7 hearing at Pages 59 and 60, and this is the testimony by Mr. Krause, a partner in Mr. Hendler's firm and who did a lot of the interviewing of Mr. Faye:

"Q. Mr. Krause, what did you learn at any of these three meetings about Mr. Faye, about any purchase of a diamond ring by his wife?

"A. Nothing.

"Q. Did you inquire?

"A. No.

"Q. Did Mr. Faye say anything at that time about that?

"A. Not that I recall.

"Q. Did Mr. Leinwand ever mention to you that Mr. Faye had mentioned it to him?

"A. Not that I recall."

Search this record as you will, there is no basis for Mr. Hendler's statement that Mr. Faye disclosed the circumstances around this transaction. Therefore, I will

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submit that the ring was an asset of Mr. Faye's estate, and it was fraudulently, knowingly and fraudulently, concealed from the Trustee.

It is a substantial asset, there is testimony in the record that it is worth $15,000, which otherwise could be used to pay off creditors, and I submit at the very least that Referee Ryan's decision is not clearly erroneous, but, quite the contrary, is supported by substantial evidence.

THE COURT: Thank you, Mr. Zitter. I will give you a couple of minutes, Mr. Hendler. I would like to ask you, did you make this point as to legal advice before the Bankruptcy Judge?

MR. HENDLER: Yes, Judge.

THE COURT: Does that appear in the transcript?

MR. HENDLER: Yes, it does.

THE COURT: Where does that appear?

MR. HENDLER: It starts, your Honor, in the Minutes dated September 7, 1973, on Page 40 and onward.

THE COURT: I will give you two minutes here if you want to reply.

MR. HENDLER: What Mr. Zitter has done, your Honor, and, again, I don't necessarily fault him, he has taken comments from Mr. Krause's testimony out of context. Your Honor would have to read that.

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We are a multi partner law firm, numerous partners were working on this matter. Mr. Krause prepared the physical schedules. Mr. Faye was interviewed by our senior partner, Mr. Leinwand, at which time I was present. There was a complete disclosure of the existence of the ring, there was a complete disclosure of the circumstances surrounding the ring.

I think if we look, your Honor, at specifications that were affirmed by the bankruptcy judge one and two, the books and records, the most sophisticated aspect was dismissed.

THE COURT: I understand that, yes.

MR. HENDLER: One is based upon the fact that the bankrupt failed to list in his schedules that the diamond was his diamond. He listed Gimbel's because it was an obligation and a debt of his wife, and in the past there is no question that he paid such obligations.

THE COURT: Mr. Zitter mentions there is some evidence here that Mrs. Faye didn't have assets --

MR. HENDLER: Mrs. Faye, and the testimony again indicates by Mrs. Goodman, subsequently Choiley from Gimbel's, that Mrs. Faye had business standing, her credit relationship with the store over 20 years was excellent.

THE COURT: I am not asking you that. I am sure

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it was. The issue is whether she could have gone out and bought a $15,000 ring on her own.

MR. HENDLER: Mrs. Faye in the past, and the testimony shows this, that she had on other occasions purchased expensive diamond rings, 10 karats, 12 karats --

THE COURT: That doesn't answer the question.

MR. HENDLER: Did she have personal funds of her own? She always had her savings of monies that her husband gave her, and her husband being a good, dutiful husband did pay for the items that she purchased on her own before.

Had Mr. Faye not gone bankrupt for reasons above and beyond his basic problem, this item certainly in time would have been paid by Mr. Faye. Mr. Faye, your Honor, had consulted our office a year before his petition in bankruptcy was filed to avoid the filing of a petition in bankruptcy to try to save his business. But his life style, his method of living and his wife's knowledge had never changed during this time. She was not cognizant of the fact that he had trouble.

He did need money from time to time. She did pledge her jewelry from time to time and always took it out of pledge. In fact, the circumstances were not unique or an indication of any act. But, your Honor, if, at its most, this was an intent to deceive a creditor, that creditor

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

could come in and claim this valuable 15 karat diamond back if this were a fraud perpetrated. But Gimbel's elected at all times to deem this a sale on an open account. Gimbel's sued Mrs. Faye for goods sold and delivered.

The credit charge was to Mrs. Nat Faye, not to Mr. Nat Faye. Counsel says that Mr. Nat Faye bought this, and he was examined by Mrs. Goodman. On the application, there is language and testimony that shows that Mrs. Goodman, the credit manager of Gimbel's, merely updated credit information. I concede, your Honor, if Mr. Faye didn't go bankrupt, he would have paid for the ring for the wife, he would have given her the money to take it out of pawn, but this was not a conspiracy or a fraud or intent to get a $15,000 ring to raise $3,500 to cover a bank overcharge which didn't exist on the day of purchase, and this situation did exist from time to time.

The economy generally in this country has been pretty adverse, this man who had been successful all his life suddenly found -- he is an egg broker -- that business had fallen off, some of his accounts went bankrupt, some of his suppliers were in difficulty. Suddenly, within this year's period of time, conditions went from bad to worse, requiring him to pledge his wife's jewelry.

He had no knowledge, he was not present, he did

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not participate. I think the credit of the man is important with respect to his standing in the community.

Incidentally, one small point. Again I submit, your Honor, that when the trial was concluded on November 5, 1973, a decision did not come down by the bankruptcy judge until November 26, 1974, more than a year after the trial was concluded, and I submit, based upon the judge's comments, more than sufficient time elapsed, and his lack of familiarity with the immediate facts in my opinion created the type of decision that was ultimately submitted and signed by the judge.

THE COURT: Thank you very much, gentlemen. I will have to review the record.

(Court adjourned.)

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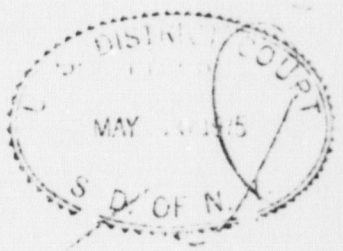
SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

In the Matter of NAT FAYF, Individually, formerly ***
d/b/a EMENESS TRADING, and *** d/b/a C & F DISTRIBUTION CO.
71 B 903

Having reviewed the record of the proceedings before Bankruptcy Judge Ryan at which he had the opportunity to hear and observe the witnesses and to determine their credibility, and having read Judge Ryan's Memorandum and Order dated November 26, 1974, the Court does not find that any of Judge Ryan's findings are "clearly erroneous" and, accordingly, his Order of November 26, 1974 is affirmed. See Bankruptcy Rule 810; Simon v. Agar, 299 F.2d 853 (2d Cir. 1962).

Dated: New York, N.Y.
May 15, 1975.

Edward B. Boyd
U. S. D. J.



Summons with Notice, Supreme Court. Personal or Substituted Service. 9-70

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80 EXCHANGE PLACE AT BROADWAY, NEW YORK

Supreme Court of the State of New York

County of NEW YORK

Index No.

Plaintiff(s) designates NEW YORK County as the place trial

The basis of the venue is Defendant's Residence

GIMBEL BROTHERS, INC.

Plaintiff(s)

against

[illegible] FAYE and HARRIET FAYE

Defendant(s)

Summons with Notice

Plaintiff resides at 33rd St. & Bdwy. NYC

County of NEW YORK

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, April 18, 1972

Defendant's Address:
2 Fifth Avenue, NYC

GEORGE A. PINS

Attorney(s) for Plaintiff(s)
Office and Post Office Address
350 Fifth Ave.
New York, N.Y. 10001
695-8780

Notice: The object of this action is goods sold and delivered to the defendants by plaintiff.

The relief sought is $37,331.78

Upon your failure to appear, judgment will be taken against you by default for the sum of $ ~~92,31~~ 37,331.78 with interest from July 10 19 71 and the costs of this action.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------x

GIMBEL BROTHERS, INC.

Plaintiff

-against-

NAT FAYE and
HARRIET FAYE

Defendants

----------x

Plaintiff, by its attorney, GEORGE A. PINS, alleges:

FIRST CAUSE OF ACTION AGAINST DEFENDANT NAT FAYE

1. That at all the times hereinafter mentioned, plaintiff was a domestic corporation, duly organized and existing under and by virtue of the laws of the State of New York.

2. That heretofore, plaintiff and defendant entered into an agreement whereby goods, wares and merchandise were to be sold upon an open account pursuant to section 413 of the Personal Property Law.

3. That the defendant agreed to pay an agreed price for articles so purchased, but failed to do so, and there is now an unpaid balance of $17,519.99, which is past due and owing from the defendant to the plaintiff.

4. That there is additionally due and owing the sum of $3,514.00, being 20% of the balance due upon account, as attorney's fees, pursuant to the agreement between the parties.

5. That there is now due and owing the sum of $21,033.99, which encompasses Paragraphs "3" and "4" of this complaint, payment of which has been duly demanded and refused.

SECOND CAUSE OF ACTION AGAINST DEFENDANT HARRIET FAYE

6. That heretofore, between April 1, 1971, and July 10, 1971, plaintiff sold and delivered to defendant, HARRIET FAYE, goods, wares and merchandise in the agreed sum and reasonable value of $16,336.80.

7. That no part of said sum has been paid except the sum of $29.00, leaving an agreed balance due and owing from defendant HARRIET FAYE to plaintiff of $16,307.80, no part of which has been paid, although duly demanded.

WHEREFORE, plaintiff demands judgment against defendant NAT FAYE, in the sum of $21,023.98, and judgment against defendant HARRIET FAYE, in the sum of $16,307.80, all with interest from July 10, 1971, together with the costs and disbursements of this action.

GEORGE A. PINS
Attorney for Plaintiff
Office & P.O. Address
350 Fifth Avenue
New York, New York 10001
695-8780

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------x

In the Matter of

NAT FAYE,

Bankrupt-Appellant.

Court of Appeals

No. 75-5011

AFFIDAVIT

----------x

KENNETH ZITTER,

Trustee-Appellee.

----------x

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

ROBERT J. MULLIGAN being duly sworn deposes and says:

I am the Assistant Secretary of Gimbel Brothers, New York and have been asked to submit this Affidavit in connection with the Appeal of Nat Faye, Bankrupt, to the United States Court of Appeals for the Second Circuit.

I have been informed that one of the crucial issues on the question of Mr. Faye's dischargeability in bankruptcy centers around the purchase of a diamond ring from Gimbel Brothers, Inc. by his wife in June, 1971.

Apparently, the Bankruptcy Judge made a finding that the sale was a "memo" sale and found that of great significance in

determining whether the ring was purchased Mr. Faye or Mrs. Faye. Without going into or expressing an opinion on the legal consequences of the transaction, if I had been called to testify I would have testified to the following:

1. From a review of our records, it appears that the ring in question was charged to Account No. 01 066 174.

2. This account is in the name of Mrs. Nat Faye, and credit was extended solely to Mrs. Faye.

3. At the time of purchase Mrs. Faye signed the sales slip and the sale was clearly to her individually.

4. The purchase was first reflected on the statement sent to Mrs. Faye on August 9, 1971.

5. When Gimbels sent the bill to Mrs. Faye, the sale was then considered a completed credit card transaction.

Sworn to before me this
/ day of October, 1975.

Julia Callaghan

JULIA CALLAGHAN
Notary Public, State of New York
No. 31-5575450
Qualified in New York County
Commission Expires March 30, 1976

Robert J. Mulligan

ROBERT J. MULLIGAN
Assistant Secretary

STATE OF NEW YORK)
: SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10303. That on the day of , 1975 deponent served the within upon

attorneys(s) for

in this action, at

the address(es) designated by said attorney(s) for that purpose by depositing 3 true copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

.....
ROBERT BAILEY

Sworn to before me, this
day of , 1975.

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1976